SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11477-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JAMIE STEPHENSON Respondent

Before:

Mr P.S.L. Housego (in the chair)
Miss N. Lucking
Dr S. Bown

Date of Hearing: 2 November 2016

Appearances

Giles Wheeler, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Suzanne Jackson, solicitor of Solicitors Regulation Authority, for the Applicant

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were set out in a Rule 5 Statement dated 27 January 2016 and were as follows:

1.1 From in or around April 2014 to November 2014 he practised as a solicitor without recognition under the style of "Keyne Law" and in so doing held himself out to the public as being authorised and regulated by the Solicitors Regulation Authority to so practice when he was not and thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 (the "Principles") and Rule 1.1 SRA Practice Framework Rules 2011 ("SPFR").

1.2 In August 2014 he informed a Forensic Investigator in the employment of the SRA that he did not hold client monies and that he had never opened or operated a client account under the style of Keyne Law when this was untrue and thereby breached any or all of Principles 2, 6 and 7 of the Principles.

1.3 On a date unknown, he created and produced two eviction notices under Claim Numbers AOOMK294 and AOOMK341 dated 23 and 25 September 2014 respectively which were purported to have been issued by Milton Keynes County Court when they were not and thereby breached any or all of Principles 1, 2 and 6 of the Principles.

2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1, 1.2 and 1.3. Proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement with exhibit SEJ1 dated 27 January 2016
- Interim Report of Oliver Baker, Forensic Investigation Officer dated 6 November 2014
- Final Report of Oliver Baker, Forensic Investigation Officer dated 9 February 2015
- Reply to the Respondent's Answer dated 22 April 2016
- Witness Statement of Oliver Baker dated 25 July 2016
- Witness Statement of David Paul Nix dated 22 July 2016
- Cost Schedules dated 27 January 2016 and 26 October 2016

Respondent

- The Respondent's Response to the Rule 5(2) Statement with exhibits (undated but received on 28 March 2016)
- Letter from the Respondent to the Tribunal's administrative office dated 1 November 2016
- Witness Statement of the Respondent dated 2 November 2016 (received on 1 November 2016)

- Second Witness Statement of the Respondent (Statement of Means) dated 1 November 2016
- Medical Information from the Respondent
- Email from the Respondent's father to the Tribunal dated 26 July 2016.

Preliminary Matters – Application to proceed in the absence of the Respondent

4. The Applicant invited the Tribunal to proceed in the Respondent's absence. The Respondent had referred to the hearing being listed to start "tomorrow" in his correspondence received on 1 November 2016. The Respondent was aware of the hearing and had asked for the hearing to go ahead unless the Tribunal considered it required additional evidence in respect of his mental health. If the Tribunal did require such information the Respondent sought an adjournment.

5. The Tribunal considered Hayward, Jones and Purvis [2001] EWCA Crim 168 and General Medical Council v. Adeogba [2016] EWCA Civ 162. The Tribunal had to decide whether to proceed in the absence of the Respondent. This was a discretionary decision and that discretion should only be exercised rarely and with extreme care and caution, especially given the Respondent's mental health. Jones and Adeogba set out the key case law that the Tribunal needed to take into account and the Tribunal considered this guidance and the Applicant's submissions and the Respondent's letter of 1 November 2016. The Tribunal was satisfied that the Respondent was aware of the hearing and had voluntarily absented himself. The Tribunal did not require additional information in respect of the Respondent's mental health. The Tribunal found that it was in the interests of justice that the matter should proceed in the absence of the Respondent.

Factual Background

6. The Respondent was born in 1981 and was admitted as a solicitor on 15 July 2008. His name remained on the Roll of Solicitors. On 12 November 2014, an Adjudication Panel of the SRA resolved to intervene into the practice of the Respondent, operating as Keyne Law, and the intervention was effected on 13 November 2014. The Respondent's Practising Certificate was suspended. The Respondent did not hold a current Practising Certificate. At all relevant times the Respondent carried on practise as a sole practitioner solicitor at what the Applicant alleged was a non-authorised firm of Keyne Law of Luminous House, 300 South Row, Milton Keynes, Buckinghamshire, MK9 2FR ("the Firm").

7. On 22 July 2014 a duly authorised officer of the SRA, Oliver Baker Forensic Investigation Officer ("FIO") commenced an inspection of the books of account and other documents of the Firm. In the course of that investigation an interim report was produced dated 6 November 2014 ("IFIR"). A final report was produced on 9 February 2015 ("FIR"). The IFIR and FIR identified a number of concerns regarding the operation of the Firm and the conduct of the Respondent. One of the concerns revealed by the reports was that the Respondent had been operating as a solicitor under the style of Keyne Law when Keyne Law was not authorised by the SRA.

Witnesses

8. None.

Findings of Fact and Law

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

10. **Allegation 1.1 - From in or around April 2014 to November 2014 the Respondent practised as a solicitor without recognition under the style of "Keyne Law" and in so doing held himself out to the public as being authorised and regulated by the Solicitors Regulation Authority to so practice when he was not and thereby breached any or all of Principles 2 and 6 of the Principles and Rule 1.1 SPFR.**

The Applicant's Case

10.1 Rule 1.1 of The SRA Practice Framework Rules 2011 provides that a solicitor can only practise from an office in England and Wales as:

1.1(a) A recognised sole practitioner, or an employee of one;

1.1(b) A solicitor exempt from the obligation to be a recognised sole practitioner;

1.1(c) A manager, employee, member or interest holder of an authorised body;

1.1(d) A manager, employee, member or interest holder of an authorised non-SRA firm; or

1.1(e) Undertaking in-house practice.

10.2 On 24 January 2014 the Respondent by email made an Application for Firm Authorisation and Sole Practitioner Recognition in relation to the Firm. The Application included a section headed "suitability test". One of the questions asked was, "Is the candidate currently facing any criminal charges". The Respondent answered "no". The section goes on to say that the SRA "Will not determine their application until they can confirm that the charge(s) have either been dropped or the outcome of their case is known." The Application required that the SRA be notified as soon as the candidate became aware that any information provided in the Application had changed. The Respondent had ticked the box to confirm that he would update the SRA if the position changed. The Application was acknowledged and the Respondent was informed on 12 February 2014 that the application could take anywhere up to six months to be considered once it was complete. The Application was not complete at that stage as a PII quote was required (which was provided that day) and a fee was required (the Respondent said that he had completed a credit card fee mandate form).

10.3 On 4 July 2014 the SRA's Authorisation Officer informed the Respondent by email that it had come to light that he had been arrested on 12 February 2014 for common assault and released on bail and was due to appear at Northampton Magistrates Court on 10 July 2014. The SRA had been informed of the Respondent's arrest and subsequent charge by the Police. In the email it detailed that the Respondent had not updated the SRA regarding this charge as required by the suitability test, which formed part of his Recognised Sole Practitioner application. The email went on to say that in accordance with the Suitability Test the SRA would "not determine the application until an Applicant can confirm that the charge(s) have either been dropped or the outcome of their case is known". The Respondent was advised to withdraw his application until the outcome of the court hearing was known. Nothing further was heard from the Respondent in response to this email or to a further email sent on 9 July 2014. The Respondent was notified on 17 July 2014 that his Recognised Sole Practitioners application and application for authorisation of the Firm had been treated by the SRA as withdrawn. The Application was never resurrected by the Respondent; nor was any fresh application made to the SRA for either recognition as a Recognised Sole Practitioner or authorisation of the Firm. The Respondent was acquitted of the charge in December 2014.

10.4 Although the Respondent contended that he had been given assurances about the authorisation process and the fact it would be quick the Applicant did not accept that the Respondent had been given any such assurance and that the information he had been given about timescales was set out in the email of 12 February 2014. Mr Wheeler accepted that six months could be regarded as a long time, however, the Respondent's arrest and charge occurred shortly after he had made the application so the timescale made no real difference. Had the Respondent wished to challenge the way the SRA dealt with his application he could have done so by way of judicial review or he could have written to the SRA when they contacted him about the application being withdrawn but he did neither. In his witness statement, Mr Nix confirmed that he had reviewed the Respondent's file and that there was no record of any assurance that he was entitled to practise as a Recognised Sole Practitioner with authorisation. Mr Nix's evidence was that the SRA had no policy to allow individuals to practise without authorisation in any way. Mr Wheeler did not accept that the Applicant was estopped from refusing to grant the Application.

10.5 Despite not being authorised the Respondent practised as a sole solicitor under the style of "Keyne Law" from an office in England and Wales from in or around April 2014 until the SRA intervened into that practice on 13 November 2014 and the Respondent continued to practice as a solicitor after the FIO investigation commenced in July 2014.

10.6 The SRA came into the possession of a letter dated 6 May 2014, under the style of Keyne Law, which stated, "We have been instructed to act on behalf of [SF]". The letter at the bottom contained the provision, "Keyne Law is authorised and Regulated by the Solicitors Regulation Authority under SRA number 629521". The Firm's website contained the statement, "Keyne Law is authorised and regulated by the Solicitors Regulation Authority under SRA number 629521". The Firm was not authorised and regulated by the SRA and the SRA number quoted was fabricated.

10.7 Documentation obtained under S44B of the Solicitors Act 1974 from solicitors SJL, who acted in the purchase of a property, showed that the Respondent acted for SD in the sale of the property to SJL's client. The documents included a copy of the buyers solicitors' front sheet identifying the Firm as the name of the solicitor acting and in the telephone exchange box, it was recorded that exchange had taken place on the 21 October 2014 with the Respondent. The matter information form, recorded the Firm under the heading "other side's solicitors". A letter from the Estate Agents dated 16 July 2014 enclosed a copy of their 'Memorandum of Sale' in which the Firm were the vendor's solicitors. A letter dated 25 July 2014 from the Firm to SJL confirmed they acted for SD in the sale and enclosed the draft contract and Title Documents. At the foot of the letter it stated "Keyne Law is authorised and regulated by the Solicitors Regulation Authority under SRA number 629521". There was further documentation in respect of this transaction which included a letter dated 24 October 2014 from SJL written to the Firm to confirm the telephone conversation with the Respondent on 21 October 2014 when exchange of contracts took place. Further documentation and files reviewed after the intervention confirmed the above position. In particular the file relating to the sale contained letters from the Firm to SJL and SD confirming they were instructed in the sale.

10.8 An email dated 21 October 2014 detailed that the purchaser could not locate the Firm on the Law Society's website and that the SRA had confirmed that the Firm was not authorised by the SRA. Subsequent to this discovery, the matter was restructured and arrangements were put in place in order that the Firm received no monies following the sale with the sale monies being sent directly by the purchaser's solicitors to other solicitors in the chain.

10.9 The Respondent sent numerous correspondence which included the statement that "Keyne Law is authorised and Regulated by the Solicitors Regulation Authority under SRA number 629521" (as did the Firm's website). These included the letter dated 6 May 2014, numerous communications from the Respondent on the SJL file relating to the purchase of a property, communications on the sale file of the same property and communications on a purchase file for another property.

10.10 The Respondent acted in a minimum of 91 client matters under the style of Keyne Law. The bank account "Mr Jamie Stephenson trading as Keyne Law Clients Account" was opened on 11 February 2014. Significant sums of money had been paid into and then out of that client bank account. The first payment into the account was made on the 7 April 2014 in the sum of £100. During the period 7 April 2014 to 12 November 2014, client funds totalling £341,612.00 were received into the account. A review of the client account bank statements highlighted that the Respondent was engaged in financial transactions redolent of an authorised and regulated legal practise as set out in the FIR. For example, on 3 September 2014 a payment of £25,904.13 was made from client account with the narrative "On-line Banking bill payment to Mr and Mrs [E] Ref: - Sale proceeds". Between 7 April 2014 and 12 November 2014, funds totalling £23,501.75 were transferred from the client account to the office account (Mr Jamie Stephenson trading as Keyne Law). Bills of Costs had been raised on the Firm's letterhead paper totalling £23,501.40. In addition to this, during the period 11 February 2014 to 13 November 2014 £89,650.00 had been lodged into office account by M Stephenson believed to be the Respondent's mother. The Respondent made payments to himself and to members of staff out of this account.

10.11 As the Respondent's application to authorise the Firm had not been granted the statement that it was authorised and regulated by the SRA was untrue. Nor had the Firm been provided with an SRA number. SRA records confirmed that the number 629521 was not assigned to any authorised firm. Accordingly, the Applicant submitted that in addition to practising otherwise than in a manner provided for within Rule 1.1 SRA Practice Framework Rules 2011, the Respondent also acted without integrity, in breach of Principle 2. At all material times, the Respondent must have known that he did not have Recognised Sole Practitioner status and that the Firm was not authorised by the SRA. If he was initially under any doubts concerning the position these would have been dispelled by the email which he received on 12 February 2014 (which made it apparent that his application had not been determined). A solicitor of integrity does not make statements to others concerning their practising status which they know to be untrue.

10.12 The Applicant also submitted that the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6. The public would trust that any statement made in a document emanating from a solicitor's office to be strictly true. Consequently, the effect of the Respondent in making statements concerning his practising status which he knew to be untrue would inevitably be to diminish that trust.

The Respondent's Case

10.13 The Respondent accepted that he ran Keyne Law without the proper authorisation and clearance from the Applicant. The Respondent's written evidence stated that it was imperative that the Tribunal considered the complex background and series of events that preceded these incidents and led to the Respondent suffering from a severe mental illness. The actions and inactions taken by the Respondent were extremely out of character and were a direct consequence of the mental illness he was suffering from which prevented him from thinking clearly and behaving rationally and fully considering his actions.

10.14 The Respondent stated that the Applicant gave assurances to the Respondent that the Respondent's application for recognition as a Sole Practitioner would be accepted and the Respondent relied on that representation to his detriment. The Applicant was accordingly estopped from refusing to grant the Application. Further the Applicant failed to fully consider and/or deal with the application and "withdrew" the application without the Respondent's consent in a situation where the Applicant was not entitled to effect a withdrawal and, in so doing, the Applicant denied the Respondent the opportunity of having the application dealt with and, if appropriate, reviewed and appealed in the proper manner.

10.15 The Applicant had contravened Article 6(2) of the European Convention on Human Rights as it had not treated the Respondent as presumed innocent until proved guilty. The Applicant's refusal to determine the application and/or consider the application and/or refuse the application was due to a false allegation made against the Respondent by his ex-wife that he had assaulted her. The Respondent was acquitted by Northampton Magistrates Court of that allegation on 11 December 2014. Had the Applicant complied with Article 6(2) and assumed the Respondent's innocence it would have granted the application and none of the issues alleged by the Applicant

would have arisen or been relevant. The Respondent also alleged that the Applicant's actions had breached his Article 8 rights.

10.16 During the period between 18 February and 12 March 2014 the Respondent called the Authorisation Department and explained, anonymously, the circumstances of his arrest. He was advised that in the circumstances his application could not be progressed further. This left the Respondent in a "Catch 22" position as he had rented premises, borrowed money, agreed to take on staff and agreed to take on clients' work in the future. The Respondent's intentions in starting to trade the business were not for personal gain nor were they to purposely act in a way designed to be dishonest or breach the rules of the Applicant. His intention was to start up the business legitimately in order to protect and assist the members of staff whom he considered had been wrongfully dismissed by his former firm and to provide a quality service to the public.

10.17 The Respondent's health issues came to a climax on 18 February 2014 as a direct consequence of the false allegations made against him by his ex-wife on 12 February 2014. The Respondent was not, as a consequence of the mental health issues which he was suffering from, able to understand or comprehend the issues that he was suffering or things that were occurring during that period nor did he have the capacity to take reasoned decisions during that time. The Respondent considered that the commencement of trading Keyne Law, continuing to run it and the manner in which the investigation by the Applicant were dealt with were all actions that were outside the normal parameters of his character and were due to his mental health. The Respondent did not believe that the Tribunal should punish him for actions that were, in essence, a direct result of his illness.

10.18 The Respondent had considered issuing Judicial Review proceedings against the Applicant in respect of his application for authorisation but had not done so. The reason for this was not that the Respondent did not believe that such proceedings would be successful but, rather, due to the adverse impact such proceedings would have on the Respondent's health and ability to continue the process of rebuilding his life.

<u>The Tribunal's Decision</u>

10.19 By coincidence the Lay Member of the Tribunal was a doctor. This assisted the Tribunal in the reading of the Respondent's medical notes. The Tribunal was mindful not to use the doctor as any form of medical expert.

10.20 The Respondent had admitted that he ran Keyne Law without the proper authorisation and clearance from the Applicant. It was not clear whether the Respondent also admitted that he had breached Principles 2 and 6 of the Principles and these allegations were treated as denied.

10.21 Rule 1.1 SPFR provided that a solicitor may only practise as a solicitor in a number of ways which included as a recognised sole practitioner. The Respondent had applied for authorisation on 24 January 2014. He went ahead and practised as a sole practitioner before any authorisation had been granted. This was clearly a breach of Rule 1.1 SPFR.

10.22 The Respondent had been told on 12 February 2014 that it could take up to six months for his application to be decided. On the same date he was arrested after his wife alleged assault. He rang the Applicant anonymously and asked how this would affect his application. He was told by the Authorisation Department that the application could not proceed until the criminal matters were concluded. The Respondent did not inform the Applicant about his arrest or the fact that he was charged. The Respondent proceeded to open the practice and run it without authorisation. His header paper stated that he was authorised and regulated by the SRA and gave a fabricated SRA authorisation number. The Respondent was not authorised and knew he was not authorised.

10.23 Principle 2 requires that a solicitor act with integrity. The Tribunal was an expert Tribunal and was able to identify whether or not a Respondent had acted with integrity by reference to the particular facts of the case. The Tribunal took into account all of the Respondent's evidence as to the reasons he had started the Firm. The fabrication of the SRA number for the Firm was a deliberate act. This number was included on the Firm's headed paper. The Tribunal found that the Respondent had not acted with integrity.

10.24 Principle 6 requires that a solicitor behave in a way that maintained the trust that the public placed in him and in the provision of legal services. The public would not trust someone who set up a Firm and started practising without authorisation and who at the same time held themselves out as authorised. In the Tribunal's view a member of the public would be horrified if they used the Firm and found out it was not authorised when it said it was. The Tribunal found that the Respondent had breached Principle 6.

10.25 The Tribunal found allegation 1.1 proved beyond reasonable doubt.

11. **Allegation 1.2 - In August 2014 the Respondent informed a Forensic Investigator in the employment of the SRA that he did not hold client monies and that he had never opened or operated a client account under the style of Keyne Law when this was untrue and thereby breached any or all of Principles 2, 6 and 7 of the Principles.**

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

11.1 In an email dated 31 July 2014 the FIO asked the Respondent six questions about the Firm, which included questions relating to client monies and client account. In emails dated 20 August 2014 and 21 August 2014 from the Respondent to the FIO, the Respondent stated that he did not hold client monies under the style of Keyne Law and had never opened or operated a client account under the style of Keyne Law. On 6 October 2014, a Notice pursuant to Section 44B of the Solicitors Act 1974 was served on the Respondent requiring him to provide information and documentation to the SRA including information relating to his office and client account. In a response dated 20 October 2014 the Respondent provided copy bank statements for the Firm's client bank account for the period 6 May 2014 to 4 July 2014 and details of the business account. The bank statements confirmed that the Firm held money on client account. The opening balance on the 6 May 2014 was £300.00 and the closing balance on 4 July 2014 was £137.25. The minimum and maximum balances during

the intervening period were £37.25 on 12 June 2014 and £2,300.00 on 3 June 2014. The statements showed that between 3 May and 5 June 2014 the total payments out of the account were £1,542.75 and the total receipts were £2,376.00 and between 6 June and 4 July 2014 the total payments out of the account were £1,576.00 and the total receipts were £580.00.

11.2 The Applicant's case was that the Respondent acted without integrity, in breach of Principle 2. The statements made by the Respondent to the FIO in the emails dated 20 and 21 August 2014 were untrue. Since the Respondent was the sole signatory on the bank accounts of the Firm he must have known them to be untrue. A solicitor of integrity would be completely frank in their dealings with their professional regulators and would be astute to answer all enquiries received from them in a manner which was true to the best of their knowledge. Further the Applicant submitted that the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6. The Applicant reiterated that the public would trust that any statement made in a document emanating from a solicitor's office to be strictly true. Consequently, the effect of the Respondent making untrue statements concerning the banking arrangements of the Firm would diminish that trust. The Applicant also submitted that the Respondent failed to comply with his legal and regulatory obligations and deal with his regulator and ombudsmen in an open, timely and co-operative manner, in breach of Principle 7. The Respondent provided the FIO with information which was untrue, and which he must have known to be untrue, in the emails dated 20 August and 21 August 2014. The Respondent dealt with the regulator in a manner which was neither open nor co-operative.

The Respondent's Case

11.3 The Respondent accepted that some of the information provided to the FIO during the investigation could appear to be misleading.

The Tribunal's Decision

11.4 The Tribunal treated the allegation as denied. The Respondent had opened and operated a client account. On 20 August 2014 the Respondent told the FIO that he did not hold any client monies in response to a question as to whether he had ever held client monies and/or had opened a client bank account under the style of Keyne Law. When the FIO pressed for clarification the Respondent told him, on 21 August 2014, that he had not held client monies and nor had he opened and maintained a client account. There were bank statements dating from April 2014 for "Mr Jamie Stephenson Trading as Keyne Law Clients Account" which had been opened in February 2014.

11.5 The Tribunal found that when, in August 2014, the Respondent informed the FIO that he did not hold client monies and that he had never opened or operated a client account under the style of Keyne Law this was untrue. The Tribunal went on to consider whether in doing so the Respondent breached any or all of Principles 2, 6 and 7 of the Principles. Principles 2 and 6 are set out above. Principle 7 requires a solicitor to comply with their legal and regulatory obligations and deal with their regulator in an open, timely and co-operative manner. The Respondent had lied to the

FIO and this was clearly a breach of Principle 7. No solicitor acting with integrity would lie to their regulator and the public would expect a solicitor not to lie to their regulator. If the public found out that a solicitor had lied to their regulator this would not maintain the trust that the public placed in the solicitor and in the provision of legal services. Principles 2, 6 and 7 had been breached. The Tribunal found allegation 1.2 proved beyond reasonable doubt.

12. **Allegation 1.3 - On a date unknown, he created and produced two eviction notices under Claim Numbers AOOMK294 and AOOMK341 dated 23 and 25 September 2014 respectively which were purported to have been issued by Milton Keynes County Court when they were not and thereby breached any or all of Principles 1, 2 and 6 of the Principles.**

The Applicant's Case

12.1 The Respondent was instructed to act in Repossession Proceedings by Mr AC and Ms KC. Mr AC was a property specialist at a company who acted for the landlords of the properties in question being Ms SS and Ms TC. Ms SS's matter was dealt with under Claim Reference AOOMK294 and Ms TC's under Claim Reference AOOMK341.

12.2 By email dated 23 May 2014, Mr AC sent to the Respondent the ID for Ms SS. The Respondent on the same day forwarded this to Ms JA (an unadmitted fee earner at the Firm). The Claim Form for possession was sent to Milton Keynes County Court under cover of a letter dated 30 May 2014. The claim was issued on 5 June 2014 and a Request for Possession order and costs was made on 26 June 2014. By way of Order dated 21 July 2014 the claim for possession was struck out. A letter dated 31 August 2014 was sent to the Court by the Firm detailing that a statement in the Order was incorrect. The letter was copied to the tenant Miss TR. In an email dated 31 August 2014 the Respondent informed Mr AC of what he said was the Court's error. The Court responded in a letter dated 12 September 2014 acknowledging the error but confirming the strike out Order remained good.

12.3 By way of letter dated 23 June 2014 the Claim Form for possession was sent to Milton Keynes County Court. The claim was issued on 27 June 2014. A request for Possession was made in a letter dated 14 July 2014. By way of Order dated 9 August 2014 the claim for possession was struck out. In a letter dated 28 August 2014 the Firm wrote to the Court to inform them that they considered the Order was erroneous. A copy of this was sent to Ms TC by letter dated 28 August 2014 and by way of email from the Respondent to Mr AC as an attachment.

12.4 During the Intervention process the agents identified two eviction notices relating to the above two matters dated 23 and 25 September 2014 respectively. In both eviction notices Mr Jamie Stephenson / Keyne Law were referred to as the claimant's solicitors. Queries were raised by the intervention agents with Mr AC. In response Mr AC said in an email dated 15 November 2014, "Please find attached the copy warrants and orders provided by Jamie Stephenson at Keyne Law, once confronted with the allegations of their falsification he admitted to this and said he issued them to me to get me "off his back"...." .The SRA's Fraud and Confidential Intelligence

Bureau wrote to Milton Keynes County Court regarding the two eviction notices. Milton Keynes County Court confirmed "that the documents that you attached to your letter are indeed falsified".

12.5 The Applicant's case was that the Respondent failed to uphold the rule of law and the proper administration of justice, in breach of Principle 1. The falsification of warrants and orders issued by the Court was necessarily contrary to the rule of law and to subvert the proper administration of justice. Further, the Applicant argued that the Respondent acted without integrity, in breach of Principle 2. No solicitor of integrity would falsify documents which purported to be an Order of the Court. The Applicant submitted that the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6. The public would trust a solicitor not to falsify documents purportedly emanating from the Court. Consequently, the falsification of such documents by a solicitor would necessarily diminish that trust.

The Respondent's Case

12.6 The Respondent denied that he had breached the Principles as alleged at paragraph 1.3. He did not provide any reasons for the denial.

The Tribunal's Decision

12.7 The allegation was narrowly pleaded namely that the Respondent on a date unknown, created and produced two eviction notices under Claim Numbers AOOMK294 and AOOMK341 dated 23 and 25 September 2014 respectively which were purported to have been issued by Milton Keynes County Court when they were not. The Respondent had denied the allegation.

12.8 There was evidence from Milton Keynes County Court that the two eviction notices were forged documents. There was also an email from Mr AC from the letting agents in respect of the warrants and orders which stated that once the Respondent had been confronted 'with the allegation of their falsification he admitted to this and said he issued them to get me "off his back"'. There were two requests for warrant or possession of land which appeared to include the Respondent's signature. The Tribunal was sure that the eviction notices were forged.

12.9 The Tribunal did not consider that it had sufficient evidence to be sure, beyond reasonable doubt, that the Respondent had forged the two eviction notices. The notices did not contain the Respondent's reference (they referred to the reference JA only). There was no admission from the Respondent that he had forged the documents and it was not clear why he would have done so when he knew his practice was coming to an end. The email from Mr AC was hearsay. Had there been a witness statement containing a statement of truth and a full explanation as to what the Respondent had said to Mr AC and when the Tribunal may have reached a different conclusion. Mr AC's email referred to the Respondent admitting the falsification of copy warrants and orders but the allegation as pleaded referred to eviction notices. The Tribunal could not be sure beyond reasonable doubt that the Respondent created and produced the two evictions notes. Accordingly, the alleged breaches of the

Principles fell away. The Tribunal did not find allegation 1.3 proved beyond reasonable doubt.

13. **Allegation 2 - Dishonesty was alleged with respect to the allegations at paragraphs 1.1, 1.2 and 1.3.**

13.1 Allegations 1.1 and 1.2 were found proved. Allegation 1.3 was not found proved. Although the Applicant made submissions at the hearing in respect of dishonesty and all three allegations this Judgment only contains the Applicant's case in respect of allegations 1.1 and 1.2 as its case in respect of dishonesty and allegation 1.3 fell away.

The Applicant's Case

13.2 The Respondent's actions were dishonest according to the combined test laid down in Bultitude v the Law Society [2004] EWCA Civ 1853 applying the test for dishonesty as formulated by the House of Lords in Twinsectra Ltd v Yardley (2002) 2 AC 164, which requires that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

13.3 According to the Applicant, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people by representing in correspondence that the Firm was authorised and regulated by the SRA under SRA number 629521 when such was not the case; and by informing the FIO that the Firm did not hold client monies or a client account when he knew that it held client money upon a client account. Further, not only was the Respondent's conduct in so acting dishonest by the ordinary standards of reasonable and honest people but he must also have been aware that it was dishonest by those standards.

13.4 The Applicant submitted that the use of letterheads bearing the statement, "Keyne Law is authorised and Regulated by the Solicitors Regulation Authority under SRA number 629521", which also featured on the Firm's website, was necessarily an act of conscious impropriety. In making those statements the Respondent must necessarily have appreciated that his actions would lead the public to believe that the Firm was properly constituted and regulated when it was not. The Respondent continued to make such representations after he had been notified that his application for authorisation had been withdrawn on 17 July 2014. The SRA number which the Respondent used on the website and the Firm's letter heads was a fabrication. The Respondent can have had no basis for believing that it was a number which he was entitled to use in relation to the Firm.

13.5 The Respondent was the sole principal of the Firm and it was inconceivable that he did not know that it operated a client account given the duration for which it had been opened and the amounts passing through it. The incorrect statement in respect of the client account and client monies was made to an employee of the Respondent's regulator in the context of an official investigation. The Respondent must have realised that it was important to be truthful in such a context. Instead he chose to mislead the FIO. Further, the statement was repeated on more than one occasion. The Respondent had the opportunity to admit to his error to the FIO but chose not to take it.

13.6 Mr Wheeler drew the Tribunal's attention to the Respondent's medical records and the information they contained in respect of his mental health. In Mr Wheeler's submission there was nothing contained in those records that meant that the Respondent would not have been able to know that his actions were dishonest by the standards of ordinary and honest people.

The Respondent's Case

13.7 Whilst the Respondent accepted that he practiced as a Solicitor without Keyne Law having recognition from the Applicant he denied that he was dishonest in so doing.

The Tribunal's Decision

13.8 Allegations 1.1 and 1.2 had been found proved. Allegation 1.3 had not been found proved and the allegation of dishonesty in respect of allegation 1.3 fell away.

13.9 The Respondent had held himself out as authorised and regulated by the Applicant when he knew that he was not authorised. This was dishonest by the standards of reasonable and honest people. The objective test in Twinsectra was satisfied. To find the Respondent dishonest the Tribunal had to be sure that the subjective test in Twinsectra was satisfied and that the Respondent realised that by the ordinary standards of reasonable and honest people his conduct would have been judged to have been dishonest. The Tribunal was mindful of all it had heard and read in respect of the Respondent's mental health. The Respondent had clearly started out with a particular plan to establish the Firm and had continued with that plan despite not being authorised. Allegation 1.1 referred to the period from in or around April 2014 to November 2014. There was no evidence before the Tribunal that during this period the Respondent's mental health meant that he did not understand what he was doing or the consequences of his actions. He had fabricated a SRA number for the Firm, opened the Firm, continued to operate the Firm including after a solicitor involved in a conveyancing transaction had raised the issue of the Firm not being authorised and the Firm had continued to operate until the Applicant intervened. In the Tribunal's view the Respondent must have known that his actions were dishonest by the standards of reasonable and honest people. Dishonesty was proved beyond reasonable doubt in respect of allegation 1.1.

13.10 Allegation 1.2 had been found proved. The Respondent had lied to his regulator. This was dishonest by the standards of reasonable and honest people. The Tribunal had to be sure that the Respondent realised that by the ordinary standards of reasonable and honest people he was acting dishonestly. No solicitor could conceivably consider that by the standards of reasonable and honest people lying to your regulator was not dishonest. There was an irresistible inference that the Respondent knew that his actions would have been judged to have been dishonest by the ordinary standards of reasonable and honest people. Dishonesty was proved beyond reasonable doubt in respect of allegation 1.2.

Previous Disciplinary Matters

14. None.

Mitigation

15. The Respondent deeply regretted that these issues occurred. The Respondent set out the background and build up to the events of 2014 in his witness statement dated 2 November 2016. The Tribunal carefully read and considered the content of both witness statements provided by the Respondent and the contents of his Response to the Rule 5 statement received in March 2016.

16. Given the sensitive content of these documents, including information about third parties, the Respondent's mitigation has not been set out in full in this Judgment. In summary the Respondent had been under pressure at his previous Firm and his employment there had come to an end, he had experienced the breakdown of his marriage, the death of his cat,(to which he was particularly attached) and an allegation of assault by his wife. He had suffered a number of other incidents during the relevant period including two serious car crashes and a serious injury to a family member. These severe events had caused the Respondent to suffer a total mental breakdown and to act in a way that was out of character. He had suffered immensely both financially and emotionally. The Respondent did not consider that he would pose a risk to the profession in the future as his health issues had been contained and were being resolved.

17. The Respondent's desire to work in the legal profession was in order to help people with issues that they suffered from. The Respondent's sole aim had, at all times, been to help people and resolve their problems. The Respondent had never, at any time, intended to cause the public or any party to distrust or lose confidence in either him or the profession. In actual fact the Respondent's sole aim had been entirely the opposite of what had been alleged and the Respondent stated he could provide numerous testimonials from people with whom and for whom he has worked which confirmed that. (The Respondent had not produced any testimonials).

18. The Respondent had no intention to ever practice as a Solicitor again due to the adverse impact that his health and family life suffered as a consequence of being in the profession however that did not mean that the Respondent in any way accepted the allegations that had been made by the Applicant.

Sanction

19. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction. The Respondent was culpable for his actions. He had found himself out of work, wanting to start his own firm and to provide employment for a former colleague. This appeared to be the motivation for the founding of his Firm. This became misconduct when he continued with that plan without the authorisation from the Applicant which he knew he needed and for which he had applied. However the misconduct had commenced, it was continued intentionally. The Tribunal considered that the Respondent had thought that he would be authorised quickly and when this did not happen the Respondent continued to set up and operate the Firm in any event. He had direct control of and responsibility for the circumstances giving rise to the misconduct. As a solicitor he had acted in breach of a position of trust by holding the Firm out as authorised and regulated when it was not. The Respondent

had several years post qualification experience at the time but very limited experience as to how a firm should be run.

20. As far as the Tribunal was aware there was no actual harm caused to anybody and there was no evidence that any harm was intended. There was harm to the reputation of the legal profession. The public would not expect a solicitor to act in this way and would not expect a solicitor to lie to their regulator. If a solicitor said that their firm was regulated and authorised when it was not and the public became aware of this then this would cause significant harm to the reputation of the profession.

21. Relevant aggravating factors were that dishonesty had been alleged and proved. The misconduct was deliberate and calculated and became repeated. It continued over a period of time. The Respondent lied to his regulator to conceal his wrongdoing. The Respondent would have known or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.

22. By way of mitigating factors it was clear that the Respondent had been suffering mental health issues at the relevant time. The Tribunal had not found that this was so significant that the Respondent could not have known that his conduct was dishonest. There was no evidence produced that might lead to such a finding. No client had suffered any losses. The Respondent did not appear to have genuine insight and nor had he made open and frank admissions or co-operated with the investigating body. Far from co-operating with the investigating body he had lied to it. This meant that overall the mitigating factors were limited.

23. Given that there had been a finding of dishonesty against the Respondent, whilst the Tribunal started at the lowest end of the possible range of sanctions, namely No Order, it moved swiftly through the potential range of sanctions until it reached suspension. However given the seriousness of the misconduct and the need to protect the public and the reputation of the profession from future harm the Tribunal did not consider that suspension was a sufficient sanction. A finding of an allegation of dishonesty had been proved and this would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal considered whether the Respondent's mental health or any other factor in the case amounted to exceptional circumstances. It was satisfied that, whilst the Respondent's mental health had obviously had a detrimental impact on him, there were no exceptional circumstances and the appropriate sanction was to strike the Respondent's name off the Roll of Solicitors.

Costs

24. The Applicant applied for its costs supported by a costs schedule in the sum of £34,821.67. The scheduled referred to a brief fee of £9,300.00 but the correct fee was £9,000.00. This was the correct figure despite the fact that the hearing had only lasted for a day. The legal costs were approximately £24,000.00 and the remainder of the costs related to the costs of the forensic investigation. The Respondent had not told the Tribunal or Applicant until 1 November 2016 that he was not attending and the Applicant had had to prepare for a contested hearing.

25. The Respondent considered that the Applicant's costs were wholly disproportionate and sought detailed assessment to ascertain how the level of costs had been arrived at. If the Tribunal was to make a costs order against him the Respondent asked that his means be taken into account in determining the level of that costs order and/or that the SRA was not entitled to enforce the costs order for a sufficient period of time to allow the Respondent to try and come up with a means of paying them. The Respondent had set his financial position out in his Second Witness Statement but had not provided any supporting documentation.

26. Mr Wheeler, opposed the making of an order that costs should not be enforced without leave of the Tribunal. If the Tribunal was against him he sought an exception that costs could not be enforced, except by way of charging order, without leave of the Tribunal. The SRA had a very experienced costs recovery unit and the Tribunal should trust the SRA to act responsibly. Making an order that costs could not be enforced without leave would incur additional expenditure. The Tribunal queried the inclusion of twenty hours supervision costs and Mr Wheeler confirmed that this was the correct figure but could not provide any additional detail to that included in the schedule of costs dated 27 January 2016.

27. The Tribunal was an expert Tribunal and routinely assessed costs. To order that there should be detailed assessment of costs would incur additional costs. Accordingly the Tribunal assessed the costs. The Tribunal considered that Mr Wheeler's brief fee was too high for a relatively simple one day hearing, that the time spent in preparation could be reduced and that the time claimed for attendance at the hearing by Ms Jackson also needed to be reduced. The Tribunal assessed costs in the sum of £29,000.00.

28. Having assessed costs at this figure the Tribunal went on to consider whether this amount should be reduced as allegation 1.3 had not been proved. The Tribunal specifically considered all of the factors at paragraph 68 of its Guidance Note on Sanctions. Given the Tribunal's reasons for not finding the allegation proved, the fact that the Respondent had only provided a bare denial and that any extra costs incurred by the Applicant in respect of this allegation would be limited no reduction was required.

29. Next the Tribunal considered the Respondent's means. The Tribunal did not have any documentary evidence in support of the Respondent's assertions in his statement of his means. The Tribunal did not consider that the amount of costs should be reduced based on the information it had. Nor did the Tribunal consider it appropriate that there be an order that costs should not be enforced without leave of the Tribunal. Such an order would potentially incur additional costs for the Respondent. The Applicant had a costs recovery unit and Mr Wheeler had assured the Tribunal that that department would act responsibly in respect of any costs order. The Tribunal expected the Applicant to act in accordance with this assurance. The Tribunal ordered that the Respondent should pay costs in the sum of £29,000.00.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, JAMIE STEPHENSON, 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 £29,000.00.

Dated this 23rd day of November 2016
On behalf of the Tribunal

P.S.L. Housego
Chairman