SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11872-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

JAMES O'CONNOR — First Respondent
GILES GUY ROBERTSON — Second Respondent

Before:

Mr P. S. L. Housego (in the chair)
Mr J. Evans
Mr P. Hurley

Date of Hearing: 8 – 10 April 2019

Appearances

David Collins, barrister employed by Capsticks LLP, 1 St Georges Road, London, SW19 4DR instructed by the Solicitors Regulation Authority of the Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

James Dirks, solicitor of ASL Boston Solicitors, 66 Watery Lane, Preston, Lancashire, PR2 1AX for the First Respondent.

The Second Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent alone made by the Solicitors Regulation Authority ("SRA") were that whilst in practice as a solicitor, COLP and COFA of Barrington Lewis Law Ltd ("the Firm"), he:

1.1 In or around September 2015 – July 2017, failed to detect or prevent the misappropriation of the sum of £140,731.97 from monies held in a Client Account on behalf of Company T, and in so doing breached Principles 4, 6 and 8 of the SRA Principles 2011 ("the Principles") and Rules 6, 20 and 21.2 of the SRA Accounts Rules 2011 ("the SAR").

1.2 Failed to maintain client ledgers or client liabilities matter listings, and failed to conduct reconciliations of client accounts, and in so doing breached Principles 4, 7, 8 and 10 of the Principles; breached Rules 29.1, 29.2, 29.4, 29.9 and 29.12 of the SAR; and breached Rule 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules").

1.3 Between 2013 and 2015 misled the SRA by:

a. declaring that the Firm did not hold client money, in circumstances where the Firm did hold client money;

b. declaring that the Firm did not hold a client account, in circumstances where the Firm did hold client accounts, and had done since 2010; and

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

1.4 On or about 20 June 2016, misled the SRA by failing to declare his knowledge of a joint venture agreement ("JVA") between the Firm and Company T, in circumstances where he was aware of the existence of the JVA, and in doing so breached Principles 2, 6 and 7 of the Principles.

1.5 Between February 2015 and February 2016, caused or allowed staff wages in the sum of about £8,830.00 to be paid from the Firm's client account, and in doing so breached Principles 2, 6, 8, and 10 of the Principles and Rule 20.1 of the SAR.

1.6 Failed to cause the Firm to submit accountants' reports to the SRA for the period from 2010 to 2016, and in doing so breached Principles 7 and 8 of the Principles and Rules 32 and 32A of the SAR.

1.7 On dates between March 2013 and April 2016, caused or allowed the Firm to trade from various branch offices and under the style of various other limited companies without obtaining authorisation from the SRA, namely:

a. Eastway Solicitors Ltd;
b. Greenbridge Solicitors Ltd;
c. Quality Law Solicitors Ltd; and
d. Chancery Legal Solicitors Ltd

and in doing so breached Principles 2, 4, 6, 7, and 8 of the Principles and Rules 1.1(c) and 19 of the SRA Practice Framework Rules 2011 ("the PFR")

1.8 On or about 16 September 2015, submitted, or caused or allowed the submission of, a proposal form to the Firm's professional indemnity insurers which was misleading in that it stated that the Firm conducted 100% personal injury work, when in fact the Firm undertook various other work-streams, including conveyancing, immigration work, PPI matters, consumer credit claims, small claims matters and debt management and adjustment work, and in so doing breached Principles 2, 6 and 7 of the Principles.

1.9 On dates between 2012-2015, made statements to the SRA which were misleading in that he stated that the Firm conducted 100% personal injury work, when in fact the Firm undertook various other work-streams, including conveyancing, immigration work, PPI matters, consumer credit claims, small claims matters and debt management and adjustment work, and in so doing breached Principles 2, 6 and 7 of the Principles.

1.10 Between October 2015 and March 2016 paid, or caused or allowed to be paid, marketing fees to H&M Response Ltd ("H&M") and between October 2015 and February 2016 paid, or caused or allowed to be paid, marketing fees to BPAC-BETA Grochowalska ("BETA") for the introduction of personal injury work, in circumstances where the payment of fees was prohibited by section 56(1)(b) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("LASPO"), and in doing so breached s56(1)(b) of LASPO, Principle 7 of the Principles and Outcome 9.8 of the SRA Code of Conduct 2011 ("the Code").

2. The allegations against the Second Respondent alone made by the SRA were that whilst in practice as a solicitor at the Firm, he:

2.1 In or around September 2015 and July 2016 misappropriated the sum of £140,731.97 from monies held in a Client Account on behalf of Company T, and in doing so breached Principles 2, 4, 6 and 8 of the Principles and Rules 6 and 20 of the SAR.

2.2 Allowed a third party, Company T, to have access to the Firm's Client Account, and in doing so breached Principles 2, 6, 8 and 10 of the Principles.

2.3 On or about 3 November 2016, knowingly made misleading statements to the SRA, in relation to whether he was proposing to manage a law firm, when he had already applied to set up a recognised body known as Robertson & Co Solicitors Ltd, and in doing so breached Principles 2, 6 and 7 of the Principles.

3. Dishonesty was alleged against the First Respondent in respect of the matters set out at paragraphs 1.3, 1.4, 1.5, 1.8 and 1.9 above. Dishonesty was alleged against the Second Respondent in respect of the matters set out at paragraphs 2.1 and 2.3 above. The proof of dishonesty was not an essential ingredient for the proof of all or any of those allegations.

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included:

- Rule 5 Statement and Exhibit dated 19 September 2018
- First Respondent's Answer/Statement and Exhibits dated 1 November 2018
- First Respondent's Second Statement and Exhibits dated 26 March 2019
- Second Respondent's Statement and Exhibits dated 25 March 2019
- Applicant's Schedule of Costs dated 5 April 2019

Preliminary Matters

5. Admissibility of the Interim Forensic Investigation Report ("FIR")

The First Respondent's Submissions

5.1 The Forensic Investigation Officer ("FIO") who was the author of the FIR dated 4 August 2016 died over the weekend of 16-17 March 2019. Mr Dirks submitted that other than those matters contained in the FIR that related to matters admitted by the First Respondent, the evidence of the FIO should be deemed inadmissible. In particular, the interpretation placed on evidence by the FIO was not accepted. The FIO was not present to be cross-examined on matters such as the demeanour of the First Respondent during his interview. Nor could she be questioned on why she had arrived at the conclusions that she did. Mr Dirks confirmed that there were no factual objections. He stated that the FIR should be given zero weight as regards the disputed matters. Further, there was correspondence missing from the FIR and some evidence had been ignored by the Applicant. There was no dispute that the documents produced were genuine documents, however it was not accepted that the First Respondent had signed a document attributed to him. Mr Dirks submitted that it would be a travesty to proceed with what was essentially a criminal case against the First Respondent in the absence of any witness who could give tangible evidence.

5.2 The Civil Evidence Act required the Tribunal to take into account whether the evidence consisted of hearsay evidence. The documents produced were not in dispute. However, the transcripts of the interviews were crucial to the SRA's case, with the evidence for a number of the allegations being based solely on what was said by either the First or Second Respondent during their interviews. There were no videos of those interviews, nor were any audio recordings available. Matters in dispute could not be put to the FIO. In a criminal matter, if the officer in the case ("OIC") was not available the case would collapse. In matters before the Tribunal, the FIO was the equivalent of an OIC. For those reasons, the FIR ought not to be admitted into evidence, save where matters had been admitted by the First Respondent.

The Applicant's Submissions

5.3 Mr Collins submitted that a Rule 13 Notice was sent to the Respondents on 26 September 2018; no objection was made, and no counter-notice was received. A Rule 14 notice was sent to the Respondents on 4 March 2019. Given the death of the FIO, the First Respondent requested that Mike Shields, the line manager of the FIO,

attend to give evidence. Mr Collins submitted that in the circumstances, the provisions of Rule 14(5) applied, namely:

> "If a witness who has been required to attend a hearing in accordance with the provisions of this Rule failed to do so, the onus shall be on the party seeking to rely on the Statement of that witness to show why the Statement should be accepted in evidence".

5.4 Mr Collins submitted that the FIR should be accepted for the following reasons:

- There was no automatic exclusion for hearsay evidence;
- There was a good reason for the FIR's non-attendance; and
- The First Respondent would suffer no prejudice. The FIR was a production statement. The documents attached thereto were not in dispute;
- The criticisms made by the First Respondent were submission points that he would not be prevented from making in due course;
- The burden of proof fell on the SRA. If the SRA was unable to gainsay the First Respondent's evidence this fell in the First Respondent's favour.

The Tribunal's Decision

5.5 The Tribunal considered that in the circumstances, the FIR ought to be admitted into evidence. The content of the report was not in dispute, nor were the documents attached thereto. There was no suggestion that the transcripts of the interviews were inaccurate or that they wrongly recorded the First Respondent's responses to questions raised. It was impossible, in all the circumstances, for the FIO to attend the hearing, and her line manager had attended in her absence. As to objections to the conclusions reached by the FIO, it was for the Tribunal to consider whether the evidence produced and relied upon by the Applicant proved matters against the Respondents to the requisite standard. The FIO's opinion was not to the point in that regard. There could be no prejudice to the First Respondent in the admission of the report in full in circumstances where the absence of the FIO might fall in his favour, and there had been no objection by him to the documentary evidence in the form of any counter-notice.

6. Amendment to the Rule 5 Statement

6.1 The Applicant applied to amend the Rule 5 to include a breach of Rule 32 in allegation 1.6. The First Respondent did not object to this application; Mr Dirks considered that the omission was a typographical error. The Tribunal granted the application as it did not affect the substance of the allegation and ensured that the allegation was correct as regards the rules prevailing throughout the period of time of the allegation. The allegation as amended is detailed in paragraph 1.6 above.

7. Admission of the Statement of Mike Shields

7.1 As detailed above, Mr Shields attended the hearing in place of the FIO. The First Respondent did not object to his statement being admitted in evidence. The Tribunal granted the application for the admission of Mr Shields' evidence notwithstanding that it was served out of time.

8. Application to proceed in the absence of the Second Respondent

8.1 The Second Respondent did not attend the hearing. On 4 April 2019, the Second Respondent served his statement and exhibits on the parties and filed the same with the Tribunal. In his statement he confirmed that he would not be in attendance at the hearing as he feared for his personal safety. Mr Collins highlighted that in the statement, the Second Respondent had not applied to adjourn the proceedings. He referred the Tribunal to the decisions in R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162. Those cases set out a number of factors that the Tribunal ought to consider when determining whether to proceed in the absence of an unrepresented Respondent.

8.2 Whilst overall fairness to the Second Respondent was the prime consideration, the Tribunal ought also to consider the public interest in expeditious prosecutions, particularly in the professional regulatory sphere, where regulators had a public duty to maintain confidence in the profession. Mr Collins submitted that there was no doubt that the Second Respondent had voluntarily absented himself from the proceedings. His statement demonstrated that he was clearly aware of the proceedings. It was noted that the Second Respondent stated that he was not in the financial position to attend a hearing for 5 days at the Tribunal. Mr Collins referred the Tribunal to its Practice/Policy note on Adjournments which stated that financial reasons for a Respondent's non-attendance would not usually be sufficient reason for an adjournment. Mr Dirks confirmed that the First Respondent wished for the hearing to proceed.

The Tribunal's Decision

8.3 The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Second Respondent in accordance with the SDPR. It was clear from the Second Respondent's statement that he was in possession of the Applicant's papers, as he had replied to specific paragraph numbers as set out in the Applicant's Rule 5 Statement. The Second Respondent stated that he was unable to attend the hearing as he did not "have the financial means to attend a 5 day hearing in London". Further, the Second Respondent stated that he had been intimidated and that the Applicant had been "put on notice of this fact".

8.4 The Tribunal had regard to the authorities cited. There was nothing to suggest that an adjournment would secure the Second Respondent's attendance at a later date. Indeed, there was nothing to suggest that an adjourned hearing would remove the threat that the Second Respondent felt he faced. The Second Respondent had not requested an adjournment, nor had he requested that the hearing take place in private. He had provided no evidence to corroborate the threat he said he faced.

8.5 The Second Respondent explained that he had written to the SRA consenting to being struck off the Roll and suggested that in the alternative, his licence be suspended until he had recovered from a medical condition which would pose a risk should he be allowed to practice even with conditions on his licence. The Tribunal considered the medical report submitted by the Second Respondent. The medical report detailed his medical condition and suggested the appropriate treatment. However, the report was not sufficient for the purposes of the Tribunal's considerations as it did not address whether the Second Respondent presently was fit to take part in the proceedings, nor did it detail whether any reasonable adjustments could be made to facilitate his participation, or if not fit when he might be able to attend. Further, the report was not current, it having been prepared in May 2018. The Tribunal noted that the Second Respondent was aware of the possible sanctions that could be imposed, having himself referred to removal from the Roll, and, in terms, an indefinite suspension.

8.6 The Tribunal did not consider that the Second Respondent's financial difficulty was a compelling reason for his absence. Further, the Second Respondent had provided no evidence of his means; his assertion that he was unable to attend the hearing due to lack of funds was an assertion that had no evidential support.

8.7 The Second Respondent had provided a statement responding to the matters raised in the Applicant's Rule 5 Statement. Whilst there might be detriment to the Second Respondent if matters proceeded in his absence, the Tribunal was in possession of his comments and views of the matters, which it would take into account when determining the allegations.

8.8 Having considered matters with the utmost care and caution, applying Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 the Tribunal determined that in this instance the Second Respondent had chosen voluntarily to absent himself from the hearing and had thus waived his right to appear. Further, the Tribunal found that it was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. The First Respondent was in attendance at the hearing and wished for it to proceed. In light of these circumstances, it was just to proceed with the case, notwithstanding the Second Respondent's absence.

Factual Background

9. The First Respondent was admitted to the Roll in November 1997. He was a director of the Firm at all material times, and was the sole director from January 2012. He was also the Firm's Compliance Officer for Legal Practice (COLP) and for Finance and Administration (COFA). The Second Respondent was admitted to the Roll in June 2013. He was initially employed as a paralegal at the Firm. Following qualification he was employed as a solicitor. Both Respondents remained on the Roll. The Second Respondent did not have a current practising certificate.

10. The Firm had a number of offices:

- Head office at Skelmersdale
- Branch office in Preston trading as Eastway solicitors
- Branch office in Luton trading as Greenbridge Solicitors

- Branch office in Stockport trading as Madison Legal

11. A forensic investigation commenced on 4 May 2016 due to concerns that the Firm was conducting 100% personal injury work but did not hold client money.

Witnesses

12. The following witnesses provided statements and/or gave oral evidence:

- Mike Shields – Team Leader employed by the Applicant
- James O'Connor – First Respondent
- Ms AD – mother of Mr D

13. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

14. 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 lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of all parties.

Dishonesty

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

> "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."

16. When considering dishonesty the Tribunal firstly 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

17. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

18. **Allegation 1.1 - In or around September 2015 – July 2017, the First Respondent failed to detect or prevent the misappropriation of the sum of £140,731.97 from monies held in a Client Account on behalf of Company T, and in so doing breached Principles 4, 6 and 8 of the Principles and Rules 6, 20 and 21.2 of the SAR.**

The Applicant's Case

18.1 The First Respondent was the Principal of the Firm. He was also the COLP and COFA. As such it was his responsibility to ensure that the SAR were complied with in all of his branch offices. The First Respondent failed to detect the misappropriation by the Second Respondent of the sum of £140,731.97. That misappropriation had taken place over a period of 9 months. It was no defence for the First Respondent to state that the Second Respondent had acted alone and that he was unaware that the Second Respondent had bank accounts for Madison Legal. He ought to have known about the dealings in a branch of his Firm. Further, the First Respondent should have been aware of the accounts as monies were being paid from the Madison Legal accounts into the head office bank accounts. The sums that were transferred were significant. Mr Collins submitted that those sums alone should have put the First Respondent on notice that accounts were being operated at the branch office.

18.2 The First Respondent failed to detect and prevent the misappropriation due to his failure to properly monitor the accounts of the Firm. His supervision in respect of the misappropriated funds was wholly lacking. In his interview, when asked about whether the Firm made or received payments from Madison Legal, the First Respondent explained that the Second Respondent would send £600 per month. When asked whether that was money that the Second Respondent made from Madison Legal the First Respondent replied "… I didn't really care where he got the money, but I wanted paying for going up there, advising and teaching people … how to run personal injury claims." Mr Collins submitted that as the Principal, COLP and COFA, the First Respondent should have been intently interested in what was going through the accounts of his branch office.

18.3 In failing to detect or prevent the misappropriation the First Respondent had failed to act in the best interests of Company T in breach of Principle 4. Members of the public would expect a solicitor to protect client monies. In failing to do so, the First 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 First Respondent had also failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8.

18.4 His failures also amounted to breaches of the SAR. Rule 6 of the SAR required the First Respondent to comply with the SAR and to ensure compliance with the SAR by all of his employees. Rule 20.1 required that client monies were only withdrawn from the client account for specified purposes. Rule 21.2 required the First Respondent to have in place appropriate systems and procedures governing withdrawals from client account. The First Respondent had no such systems in place. His failures in that regard meant that he was unable to ensure compliance with the SAR and unable to ensure that client monies were only withdrawn for permitted purposes.

The First Respondent's Case

18.5 The First Respondent admitted allegation 1.1. Mr Dirks submitted that the First Respondent's conduct fell short of that expected of him as the Principal. There was no evidence, and it was not the Applicant's case that the First Respondent had derived any benefit from the misappropriated funds.

The Tribunal's Findings

18.6 The Tribunal found allegation 1.1 proved beyond reasonable doubt on the evidence presented. The First Respondent failed to ensure that there were appropriate systems in place. The Firm had a number of branch offices, however the First Respondent exercised no control over those offices or the staff working there. As long as he received payment from those offices, said to be a contribution towards the PII insurance costs, the First Respondent left those offices to their own devices. The lack of control exercised by the First Respondent over those offices meant that he did not comply with his duties as the Principal of the Firm. There was no doubt that the Respondent had breached the SAR and Principles as alleged. The Tribunal considered that the First Respondent's admission was properly made.

19. **Allegation 1.2 – the First Respondent failed to maintain client ledgers or client liabilities matter listings, and failed to conduct reconciliations of client accounts, and in so doing breached Principles 4, 7, 8 and 10 of the Principles; breached Rules 29.1, 29.2, 29.4, 29.9 and 29.12 of the SAR; and breached Rule 8.5(e) of the Authorisation Rules.**

The Applicant's Case

19.1 The FIO identified:

- there were no books of account for the Firm;
- the Firm did not hold proper accounting records;

- the Firm did not maintain client ledgers or client liability listings; and
- the Firm did not conduct client account reconciliations.

19.2 During his interview, when asked about the failure to keep properly written up accounting records, the First Respondent stated "I won't make anything up, it's down to me, no question about it". He accepted that reconciliations had not been conducted due to the Firm's system. He agreed that as the Firm's Principal, COLP and COFA, it was his responsibility to ensure that the Firm had properly written up books of account and conducted reconciliations.

19.3 Mr Collins submitted that in failing to maintain accounting records, the First Respondent had failed to act in his clients' best interests as he had placed client monies at risk in breach of Principles 4 and 10. He had also failed to comply with his legal and regulatory obligations and failed to ensure he ran his Firm in accordance with proper governance and sound financial and risk management principles in breach of Principles 7 and 8 of the Principles.

19.4 The First Respondent's failures meant that he was also in breach of the SAR; he had failed to:

- keep properly written up accounting records showing dealings with client monies in breach of Rule 29.1;
- properly record dealings with client monies in breach of Rule 29.2;
- properly record dealings with office monies in breach of Rule 29.4;
- show the current balance on client ledgers in breach of Rule 29.9; and
- conduct client account reconciliations in breach of Rule 29.12.

19.5 Further, as the COFA of an authorised body, the First Respondent was responsible for taking all reasonable steps to ensure that the Firm, its managers and its employees complied with their obligations under the SAR. The First Respondent failed to do so and thus his conduct was in breach or Rule 8.5(e) of the Authorisation Rules.

The First Respondent's Case

19.6 The First Respondent admitted allegation 1.2. Mr Dirks submitted that having met with the FIO, the First Respondent rectified the issues with the accounts. It was accepted that the accounts for the Head Office were "in a mess". However, there was no allegation of any missing monies (other than that misappropriated by the Second Respondent). It was submitted that the necessary information was being recorded by the First Respondent, who would ensure that there was a nil balance on each file before it was closed. In his evidence, the First Respondent explained that he would check every file whenever any payment was made or received.

The Tribunal's Findings

19.7 The Tribunal found allegation 1.2 proved beyond reasonable doubt on the evidence. The Tribunal considered that the First Respondent's admission was properly made.

19.8 Whilst the Tribunal accepted that the First Respondent had taken steps to correct the accounting practices within the Firm, it was not accepted that the Firm had put all the issues right. It had been submitted that the First Respondent had undertaken client account reconciliations, but on examination this was no more than to establish that each file when closed had nil balances, and not an overall 3 way reconciliation as was required by the Rules.

19.9 Rule 29.12 required:

> "You must, at least once every five weeks:
>
> (a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and
>
> (b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also
>
> (c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."

19.10 It was clear both from the FIR and the evidence of the First Respondent that he had not undertaken this process at the Head Office or at any of the branch offices. Checking each individual client's file to ensure that there were no missing monies, and that all payments in and out were accounted for was not sufficient such as to comply with Rule 29.12. The Tribunal determined that contrary to the submissions made, the First Respondent had not, and had never, undertaken client account reconciliations in accordance with the Rules.

20. **Allegation 1.3 - Between 2013 and 2015 the First Respondent misled the SRA by: (a) declaring that the Firm did not hold client money, in circumstances where the Firm did hold client money; (b) declaring that the Firm did not hold a client account, in circumstances where the Firm did hold client accounts, and had done since 2010; and in doing so breached Principles 2, 6 and 7 of the Principles.**

It was further alleged that the First Respondent's conduct was dishonest.

The Applicant's Case

20.1 The First Respondent confirmed to the FIO that he was responsible for submitting the Firm's annual information form to the SRA. In the 2011 and 2012 forms, the First Respondent confirmed that the Firm had held client money. In the Firm's renewal of practising certificate/registration and organisation recognition forms for the years 2013, 2014 and 2015, in response to the question "did the organisation or individuals within your organisation, hold or receive client money or operate a client's own account as signatory ..." the First Respondent replied "never held client money". In addition, on the 2013 form the First Respondent stated: "the rfl submitted in 2012 was incorrect, this has now been updated and should appear on your records".

20.2 On 4 May 2016, the First Respondent informed the FIO that the Firm had held client money. During his interview he confirmed that the monies received for clients as damages in personal injury matters were client monies. He explained that he had called the SRA who had informed him that the monies he held were not client monies which was why he had then declared that the Firm did not hold client monies. The First Respondent also stated during his interview that the Firm held and used a client account between 2012 and 2016.

20.3 Mr Collins submitted that the repeated making of knowingly incorrect statements to the SRA in documents relating to the Firm's authorisation amounted to a clear failure to act in accordance with the ethical standards of the profession, and so amounted to a failure to act with integrity in breach of Principle 2 of the Principles. To do so also failed to maintain the trust the public placed in the First Respondent and in the profession in breach of Principle 6. Deliberately misleading the SRA amounted to a failure by the First Respondent to deal with his regulator in an open manner in breach of Principle 7.

20.4 Further, the First Respondent's conduct in:

(i) making misleading statements to the SRA that the Firm did not hold client money when he knew this to be untrue; and

(ii) making misleading statements to the SRA that the Firm did not hold a client account when he knew this to be untrue

was dishonest by the standards of ordinary and decent people.

The First Respondent's Case

20.5 The First Respondent admitted allegation 1.3 save that he denied that his conduct was dishonest. He accepted that the answers provided by him had misled the SRA, but contended that this had been unintentional. He had mistakenly and innocently misled the SRA. The First Respondent explained that he had called the SRA ethics department who had informed him that as he did not accept monies directly from clients he did not hold client monies. Further, he did not think that the monies received from insurance companies as damages for clients were client monies until those monies were received by the clients. He had only maintained a client account for his own peace of mind. When asked by the FIO about a client account on

20 May 2016, he immediately informed her that the Firm maintained a client account. The First Respondent explained that no client had complained or suffered any loss.

20.6 Mr Dirks submitted that the question asked on the form was unclear. On any reading the question as regards a "client's own account" suggested a designated individual client account, not a generic consolidated client account, in which all client monies were kept. In addition, the First Respondent ought to be able to rely on the advice he received from the Applicant's ethics department. It was clear, from his evidence, that the First Respondent was confused about what constituted client money. The First Respondent had made a mistake, based on an unclear question and advice that he received from the ethics department. As soon as he was asked about a client account, he immediately informed the FIO that he possessed a client account. His conduct was in breach of the Principles as alleged, but was far from being dishonest.

The Tribunal's Findings

20.7 The Tribunal considered the question actually asked on the form, namely "did the organisation or individuals within your organisation, hold or receive client money or operate a client's own account as signatory …". The Tribunal considered that there were in fact two separate questions, namely (1) did the Firm/individuals within the Firm hold or receive client money and (2) did the Firm/individuals within the Firm operate a client's own account as signatory.

20.8 The Tribunal firstly dealt with (2) above, which was the substance of allegation 1.3(b). The Tribunal considered that this question was unclear. If it was asking whether the Firm held a client account as was the Applicant's submission, it was very badly worded as on its face, it seemed to ask whether the Firm held individual designated client accounts. That this was the case seemed evident from the punctuation used; the apostrophe was placed between the 't' and 's' of 'client's', which grammatically denoted the singular and not the plural. Further the question asked about "a client's own account" – the Tribunal considered that this referred to an account for a single client alone, and not a generic client account holding consolidated client monies.

20.9 For those reasons, the Tribunal did not find that the First Respondent had been asked whether he held a client account. Having not been asked the question, he could not provide a misleading answer. In the circumstances, notwithstanding the First Respondent's admission to allegation 1.3(b), the Tribunal did not find that matter proved and dismissed the allegation in that regard.

20.10 The Tribunal then considered question (1) above, which was the substance of allegation 1.3(a). Question 1 clearly asked whether the Firm had held client money. The Tribunal did not accept that the First Respondent believed that client money was money received from clients and not money due to clients. In his interview with the FIO, he confirmed that he considered the monies received for clients' damages as client money. During cross-examination, the First Respondent confirmed that he was at all times aware that he had a client account and that monies were in the client account. He attempted to explain the error as "woolly thinking" on his part when he made the declarations in 2013, 2014 and 2015. During re-examination, the First

Respondent was very clear that whilst waiting for the cheques to clear the monies were "not our money".

20.11 The Tribunal found that the First Respondent knew that he was holding client money. Not only had he accepted that in evidence both during cross-examination and re-examination, he had explained that to the FIO during his interview. Further, he had, quite properly, been placing client money into the Firm's client account. This all evidenced, the Tribunal determined, the First Respondent's knowledge as regards the status of the monies. The Tribunal found that notwithstanding the lack of clarity as regards part of the question asked on the form, the part relating to the holding of client money was very clear. The First Respondent's answer was also very clear – "never held client money". The Tribunal considered that the Respondent had given that answer in the knowledge that the Firm did in fact hold client monies. It did not accept the First Respondent's explanation of "woolly thinking", nor did it accept that he relied on advice from the ethics department. Had he been reliant on that advice, he would have closed the client account, as on his version, he would have no need for a client account. However, he did not do so. On the contrary, he continued properly to place client monies into the client account.

20.12 The Tribunal considered that the First Respondent's admission as regards allegation 1.3(a) was properly made. The Tribunal found that in declaring that the Firm did not hold client money when it did, the First Respondent had failed to maintain the trust the public placed in him and in the provision of legal services. Declarations as regards client account monies were of huge significance for members of the public as such declarations were important for the correct degree of scrutiny by the SRA of a firm's accounts, and for the protection of those monies. In failing to declare that the Firm held client monies, the First Respondent had not complied with his legal and regulatory obligations. Such conduct, the Tribunal found, fell well below the ethical standards that solicitors expected of each other and thus lacked integrity, in breach of Principle 2. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principles 2, 6 and 7 as alleged.

20.13 The Tribunal did not accept that the First Respondent had mistakenly misled the Applicant. As detailed in its findings above, the Tribunal found that the First Respondent knew that he held client monies at the times when he declared that the Firm did not hold client monies. The Tribunal considered that reasonable and honest people would consider that it was dishonest for a solicitor to declare that he did not hold client monies when he did hold client monies and knew that his statement was untrue. Declaring that no client money is held places a firm in a low risk category and makes an inspection much less likely, and removes important oversight, as no accountant's report is delivered on client account if it is declared that there is no client money. Thus the Tribunal found beyond reasonable doubt that the First Respondent's conduct had been dishonest in this regard.

20.14 Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt including that the First Respondent's conduct had been dishonest, save that it dismissed allegation 1.3(b).

21. **Allegation 1.4 - On or about 20 June 2016, the First Respondent misled the SRA by failing to declare his knowledge of a JVA between the Firm and Company T, in circumstances where he was aware of the existence of the JVA, and in doing so breached Principles 2, 6 and 7 of the Principles.**

It was further alleged that the First Respondent's conduct was dishonest.

The Applicant's Case

21.1 The Companies House records for Company T showed that its registered address was the same as Madison Legal. A JVA was entered into between Company T and Madison Legal in November 2015. The agreement was signed by the Second Respondent on behalf of Madison Legal.

21.2 During her meeting with the First Respondent on 20 June 2016, the FIO asked him about the JVA. The First Respondent explained that he was not aware of the JVA until 19 May 2016. He became aware of it having received a letter forwarded to him by the Second Respondent. That letter was from the FCA which was querying whether the Firm was authorised to carry out that type of work, as it was not listed on the FCA's registers.

21.3 In his interview with the FIO on 19 July 2016, the Second Respondent informed the FIO that the First Respondent was aware of the JVA before it had been entered into and had thought that it sounded like "a great idea". The Second Respondent further explained that Mr K had flown over to meet the First Respondent which he described as putting "the two pedigree dogs in the room to see if they could mate". He further stated that he found it difficult to believe that the First Respondent would have no knowledge of the JVA as "there was no hiding anything … files were on the desk. They were there for inspection. They were there for anybody to view". The Second Respondent provided the Applicant with an email chain where on 26 February 2016, the Second Respondent emailed the First Respondent asking him to ring E from Company T "in regards to our conversation the other night". The First Respondent responded the following day explaining that he had been admitted to hospital. The Second Respondent forwarded that response to a director of Company T, who in turn responded "yea I know. He called me to let me know".

21.4 During his interview with the FIO on 20 July 2016, the First Respondent stated that he was unaware of the JVA until 19 May 2016. He accepted that he had met Mr K. He stated that they met once only and did not discuss business. The First Respondent was referred to a letter dated 15 March 2016 to Company T regarding "breach of contract/notice to terminate" which was purportedly signed by him. The First Respondent denied that this was his signature. That letter was sent as an attachment to a letter dated 2 June 2016 to WLL. The First Respondent accepted that the signature on the 2 June 2016 letter was his signature. That letter was notice that the contract between Madison Legal and Company T had been terminated. The First Respondent explained that the Second Respondent had informed him that the contract had been terminated.

21.5 Mr Collins submitted that the Tribunal could rely on the evidence of the Second Respondent as regards this allegation. His evidence was supported by the documentary evidence, thus the Tribunal could be confident that the First Respondent was aware of the JVA prior to May 2016. The First Respondent's denial of knowledge prior to May 2016 was an attempt to minimise his involvement and to distance himself so as to reduce his responsibility.

21.6 In making misleading statements to the SRA as to his knowledge, the First Respondent had failed to be open with his regulator in breach of Principle 7. Such conduct also breached Principle 6 as members of the public would expect a solicitor to provide the regulator with truthful and accurate information. Knowingly providing incorrect information to the SRA was conduct which fell below the standards expected by the profession and thus lacked integrity in breach of Principle 2. Further, knowingly providing misleading statements was dishonest in accordance with the test in Ivey.

The First Respondent's Case

21.7 The First Respondent denied allegation 1.4. He repeated the explanation given to the FIO. He stated that he had never spoken to anyone called E, and that the meeting with Mr K was no more than 10 minutes. He had not signed the letter of 15 March 2016 terminating the contract with Company T. That letter was provided to him by the Second Respondent in June 2016. He had sent the letter of 15 March 2016 to WLL in June 2016, as it had been requested by WLL. As regards the email chain, this was the only email linking him with E. Further, in E's response where he seemed to suggest he had spoken to the First Respondent, it was noteworthy that the First Respondent was not copied into that email.

21.8 The First Respondent explained that he was unaware that the Second Respondent was undertaking activities that were outside the remit of the Firm. It was noted that the Second Respondent had been unable to produce any documentary evidence informing the First Respondent of the Second Respondent's involvement with Company T. The First Respondent explained that he was unaware that the Second Respondent was formerly a director of Company T and its predecessor. The evidence of the Second Respondent could not be trusted; the "level of deception and deceit" by the Second Respondent was "breath-taking".

21.9 Mr Dirks submitted that the First Respondent had consistently maintained that he had no knowledge of the JVA until 19 May 2016. The documentary evidence on which the Applicant relied was a vague exchange of emails between the First Respondent, Second Respondent and E. The First Respondent was not party to all of the emails in the chain. His response was that he was in hospital. The email exchange was insufficient to establish knowledge. As regards the 15 March 2016 letter, the First Respondent denied that he had signed it or even seen it until it was given to him by the Second Respondent to be sent to WLL. The First Respondent had received a letter before action sent on behalf of Company T. He sought Counsel's advice. Counsel's preliminary view was that the Second Respondent may be liable, but there was still the question of whether the Second Respondent had ostensible authority to bind the Firm. Whilst he sent the letter to WLL, the First Respondent did not within that letter

confirm the validity of the March 2016 letter. Mr Dirks submitted that taken together, the evidence relied upon to establish knowledge prior to May 2016 was insufficient.

The Tribunal's Findings

21.10 The Tribunal noted that the letter which the First Respondent accepted sending to WLL was dated 2 June 2016, after the date that he accepted that he had knowledge of the JVA. The Tribunal was concerned that the First Respondent attached a letter that was written in his name, with a signature purporting to be his signature to WLL without stating in one form or another that the letter had not been written by him, but instead relying upon it. However, the Tribunal did not find the failure to highlight the issues with that letter meant that he was the true author, or that he knew of the arrangement with Company T as at March 2016.

21.11 The First Respondent denied that he had ever met or spoken with E from Company T. The Tribunal determined that there was no credible evidence to suggest that there had ever been any meeting between the First Respondent and E. Mr Collins had submitted that the Tribunal could be confident of the First Respondent's involvement taking the documentary evidence together with the statements made by the Second Respondent during his interview. The Tribunal considered that the evidence of the Second Respondent was self-serving. The documentary evidence on which the Applicant relied was equivocal at best. The Tribunal considered that what documentary evidence there was, was less than convincing, and was far from establishing the First Respondent's knowledge to any standard, let alone beyond reasonable doubt.

21.12 Given those findings, the Tribunal determined that there was insufficient evidence to establish that the First Respondent had knowledge of the JVA prior to May 2016. It accepted the First Respondent's evidence as regards this allegation. The Tribunal did not find that the First Respondent had misled the FIO by failing to declare his knowledge of the JVA. Accordingly, the Tribunal dismissed allegation 1.4. Having dismissed the allegation, the associated allegation of dishonesty fell away.

22. **Allegation 1.5 - Between February 2015 and February 2016, the First Respondent caused or allowed staff wages in the sum of about £8,8830.00 to be paid from the Firm's client account, and in doing so breached Principles 2, 6, 8, and 10 of the Principles and Rule 20.1 of the SAR.**

It was further alleged that the First Respondent's conduct was dishonest.

The Applicant's Case

22.1 A number of payments were made from the Firm's client account for staff salaries. When asked about that in interview the First Respondent stated that this should not have happened. Mr Collins submitted that using client monies to pay staff salaries was in breach of Principle 6. Members of the public expected solicitors to treat client monies as sacrosanct. They did not expect client monies to be used for the benefit of the Firm. Using client monies in that way was also in breach of Principle 8 in that it was a failure to run the Firm in accordance with proper governance and sound financial and risk management principles. Using client monies in this way plainly

failed to protect those monies in breach of Principle 10. That such use of client monies lacked integrity was plain. No solicitor acting with integrity would cause or allow the use of client monies to settle the Firm's liabilities. As the monies were not used for a purpose permitted by Rule 20.1 of the SAR, the First Respondent was also in breach of that Rule.

22.2 It was further alleged that the First Respondent's conduct was dishonest. The First Respondent, it was submitted, knew that client money was being used to pay staff wages, and knew that client monies could not be used in this way. Honest and reasonable people would consider that it was dishonest for a solicitor to knowingly use his clients' monies to pay for the Firm's liabilities.

The First Respondent's Case

22.3 The First Respondent admitted allegation 1.5, save that he denied that his conduct was dishonest. The First Respondent explained that his wife was responsible for the payments. When the payments from client account were brought to his attention, he instructed his wife to replace the monies immediately. A note of the breaches was then made in the breaches register on each occasion. This was made available to the FIO when she attended the office. The First Respondent confirmed that he had not later checked the accounts to ensure that the monies had been repaid; he trusted his wife to do so and had noted the breaches in accordance with his requirement to do so as the Firm's COFA. Following the breaches, the First Respondent arranged further training which re-iterated the importance of keeping client and office account completely separate. The First Respondent denied that he had any financial motive to use client monies to pay staff salaries, and denied that he knew this was the case until after the event when he was made aware of the errors by his wife. The errors were human error and were not a device to prop up the finances of the Firm.

22.4 Mr Dirks submitted that there was no evidence that the monies were not replaced. Further, the breaches had been noted in the breaches register by the First Respondent in accordance with his duties as the COFA.

The Tribunal's Findings

22.5 The Tribunal found that client monies had been used to pay staff wages. Accordingly, it found, beyond reasonable doubt that the First Respondent had breached Rule 20.1 as alleged. The Tribunal found beyond reasonable doubt that the Respondent had breached Principles 6, 8 and 10 for the reasons detailed by the Applicant, and accepted by the First Respondent.

22.6 The Tribunal noted that the erroneous payments had taken place over a period of time. The Tribunal considered that a solicitor acting with integrity would, after the first erroneous payment, institute systems to try to ensure that similar mistakes did not occur in future. The first recorded payments were in February 2015. There were further erroneous payments until February 2016, at which point the First Respondent arranged for the training. The Tribunal considered that in failing to ensure that client monies were not used for unpermitted purposes in breach of the SAR, the First Respondent had failed to act with integrity. The Tribunal considered that the First Respondent's admission to allegation 1.5 was properly made.

22.7 The Tribunal found that there was no evidence that the First Respondent had instructed his wife to utilise client monies for the benefit of the Firm, nor was there any evidence that he was aware that client monies had been so used until this was pointed out to him by his wife. It was clear from the First Respondent's evidence that he did not check the client account statements as he ought to have done. The First Respondent had admitted, and the Tribunal had found proved, that he was not conducting client account reconciliations as he ought to have done. He had also admitted and it had been found proved that books of account were not properly written up. The Tribunal found that there was no evidence that at the time the transfers occurred, the Firm was not in a position to satisfy its liabilities from its office account.

22.8 Whilst the parties did not produce any evidence to show that the monies had, or indeed had not, been replaced, the Tribunal noted that the First Respondent did not face an allegation of a breach of Rule 7.1 of the SAR, namely that he failed to remedy promptly on discovery any breach of the SAR, including the replacement of any money improperly withdrawn from a client account.

22.9 The Tribunal accepted that the First Respondent was unaware of the payments from client account at the times they were made. Further, the Tribunal did not find that the First Respondent had instructed his wife to make the payments in breach of the Rules as a mechanism to prop up the Firm. The Tribunal found that the payments were made in error and were remedied by the replacement of funds into the client account. The Tribunal considered that the payments were, as had been stated by the First Respondent, innocent mistakes. The Tribunal considered that reasonable and honest people knowing all the circumstances would consider that the payments were made in error. Such people would not consider those genuine mistakes to be dishonest. Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt, save that dishonesty was not proved and thus the allegation of dishonesty was dismissed.

23. **Allegation 1.6 – The First Respondent failed to cause the Firm to submit accountants' reports to the SRA for the period from 2010 to 2016, and in doing so breached Principles 7 and 8 of the Principles and Rules 32 and 32A of the SAR.**

The Applicant's Case

23.1 On 4 May 2016, the First Respondent confirmed that he had not submitted any accountants' reports to the SRA. When asked if he was aware of the requirement to do so the First Respondent explained: "Yes. I could say no and give you a load of flannel. Just haven't done it. No malice or attempted deception, just haven't done it". During his interview the First Respondent reiterated that the Firm had not sent any accountants' reports to the SRA since 2010 despite holding client money. He explained that the failure was not so as to "subvert any rules or prevent anybody being recompensed as they should be".

23.2 Mr Collins submitted that the First Respondent was aware of the requirement to submit accountants' reports. His failure to do so was in contravention of Rules 32 and 32A of the SAR. Further, he had failed to comply with his regulatory obligation to

submit reports in breach of Principle 7 and had failed to comply with principles of good governance in breach of Principle 8.

The First Respondent's Case

23.3 The First Respondent admitted allegation 1.6.

The Tribunal's Findings

23.4 The Tribunal found beyond reasonable doubt that the First Respondent had failed to submit accountants' reports as alleged in breach of the SAR. Such a failure, it was found beyond reasonable doubt, was in breach of Principles 7 and 8 as alleged. The Tribunal found the First Respondent's admission to be properly made. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt.

24. **Allegation 1.7 - On dated between March 2013 and April 2016, caused or allowed the Firm to trade from various branch offices and under the style of various other limited companies without obtaining authorisation from the SRA, namely: (a) Eastway Solicitors Ltd; (b) Greenbridge Solicitors Ltd; (c) Quality Law Solicitors Ltd; and (d) Chancery Legal Solicitors Ltd and in doing so breached Principles 2, 4, 6, 7, and 8 of the Principles and Rules 1.1(c) and 19 of the PFR.**

The Applicant's Case

24.1 No authorisation was obtained for the Firm to trade under the name of other limited companies, namely Eastway Solicitors Ltd, Greenbridge Solicitors Ltd, Quality Law Solicitors Ltd or Chancery Legal Solicitors Ltd to trade. Mr Collins submitted:

- Eastway Solicitors Ltd was incorporated on 21 March 2013. The First Respondent was a director from 21 March 2013 – 17 November 2014. The firm undertook personal injury work. In his interview the First Respondent explained that it was a "mix up" and it was not intended to be fraudulent.

- Greenbridge Solicitors Ltd was incorporated on 8 January 2014. The First Respondent was a director from 20 March 2014. The firm undertook personal injury work. The First Respondent explained that the firm was shut down when it was realised that "what we were doing wasn't right"

- Quality Law Solicitors Ltd was incorporated on 5 August 2013. The First Respondent was a director from 5 August 2013. The First Respondent admitted in his interview that the firm had traded without authorisation. He explained that it was an error and that the firm had been shut down as soon as the error was realised.

- Chancery Legal Solicitors Ltd was incorporated on 11 April 2014. The First Respondent was a director from 11 April 2014 until 3 November 2015. The company was dissolved on 24 November 2015. The First Respondent stated in interview that the Firm undertook low value personal injury work.

24.2 In his interview the First Respondent stated that all the companies were shut down at around the same time. However, Companies House documents showed Greenbridge Solicitors Limited was dissolved on 8 August 2015, Chancery Legal Solicitors dissolved on 24 November 2015, Quality Law Solicitors dissolved on 5 April 2016 and as at 21 July 2016 Eastway Solicitors Ltd was still active with a Strike Off proposal.

24.3 Rule 1.1(c) of the PFR stated:

> "You may practice as a solicitor from an office in England and Wales in the following ways only:
> ...
>
> (c) as a manager, employee, member or interest holder of an authorised body provided that all the work you do is:
>
> (i) of a sort the body is authorised to carry out; or
>
> (ii) done for the body itself ..."

24.4 Mr Collins submitted that the First Respondent had acted in breach of Rule 1.1(c) of the PFR as the companies were not authorised by the SRA. The use of those unregulated entities as a means of trading breached Principles 7 and 8 as the First Respondent failed to comply with his legal and regulatory obligations and failed to run his business in accordance with principles of proper governance. He also breached Principles 4 and 6 as it was not in the best interests of clients for services to be provided through unregulated entities when clients were not aware of the unregulated status. Further, such conduct did not maintain the trust placed in the First Respondent and the provision of legal services.

24.5 The First Respondent's conduct also lacked integrity in breach of Principle 2. The ethical standards of the profession required that a solicitor did not seek to trade though multiple unregulated entities.

The First Respondent's Case

24.6 The First Respondent denied that any of the entities detailed above had traded, notwithstanding the comments made by him in his interview. He accepted that those comments had been accurately recorded. He explained that when he had stated that the companies were trading, he had been in error. None of the companies ever traded. There were no staff, no accounts, no headed paper, business cards, websites, office signage or compliments slips. The companies had no status and had never practised or traded.

The Tribunal's Findings

24.7 The Tribunal noted that the only evidence against the First Respondent as regards this allegation were the comments made by him in his interview with the FIO. The documentary evidence obtained related to standard Companies House records as to the incorporation, ownership and dissolution of the entities. There was no

documentary evidence to show that any of the entities had ever traded. Accordingly, the Tribunal could not be sure that any of the entities had practised in breach of Rule 1.1(c). It was clear that the solicitors in the branch offices had traded under the respective trading names for those offices. In the circumstances the Tribunal found that there was insufficient evidence to sustain this allegation and thus dismissed it.

25. **Allegation 1.8 - On or about 16 September 2015, the First Respondent submitted, or caused or allowed the submission of, a proposal form to the Firm's professional indemnity insurers which was misleading in that it stated that the Firm conducted 100% personal injury work, when in fact the Firm undertook various other work-streams, including conveyancing, immigration work, PPI matters, consumer credit claims, small claims matters and debt management and adjustment work, and in so doing breached Principles 2, 6 and 7 of the Principles.**

Allegation 1.9 - On dates between 2012-2015, made statements to the SRA which were misleading in that he stated that the Firm conducted 100% personal injury work, when in fact the Firm undertook various other work-streams, including conveyancing, immigration work, PPI matters, consumer credit claims, small claims matters and debt management and adjustment work, and in so doing breached Principles 2, 6 and 7 of the Principles.

It was further alleged that the First Respondent's conduct was dishonest.

The Applicant's Case

25.1 The First Respondent confirmed that he had completed the Firm's PII proposal form for 2015/2016. On that form he declared that the Firm undertook 100% personal injury work (90% portal work and 10% non-portal work). The FIO reviewed the Firm's Renewal of Practising Certificate/Registration and Organisation Recognition Forms from 2011 – 2015. The First Respondent made the following declarations as to areas of work:

- 2011 – the form stated that the Firm undertook 99% personal injury work and 1% non-litigation/other work;
- 2012 – the form stated that the Firm undertook 100% personal injury work;
- 2013 – the form stated that the Firm undertook 100% personal injury work;
- 2014 – the form stated that the Firm undertook 95% personal injury work and 5% family/matrimonial work;
- 2015 – the form stated that the Firm undertook 100% personal injury work;

25.2 On 1 June when the FIO attended Greenbridge Solicitors, she reviewed 5 conveyancing files and 1 immigration matter. The letters on the files in those matters were dated from 31 July – 1 December 2015. Mr Collins submitted that given those matters, it was clear that the Firm did not undertake 100% personal injury work. That this was the position was known to the First Respondent; notwithstanding his

denial of allegations 1.8 and 1.9, the First Respondent in his statement dated 26 March 2019 stated: "[the Firm] was a personal injury practice with 95% of its work in this field, although it was intended as the practice grew, we would move into other sectors of the legal market when we acquired the necessary legal experience and expertise".

25.3 The Second Respondent informed the FIO that Madison Legal had been conducting PPI, package banking account matters, consumer credit claims, small claims and debt management and debt adjusting work. When told of the work being undertaken by Madison Legal, the First Respondent stated that he was not aware of that work.

25.4 Mr Collins submitted that as the sole manager and director of the Firm, the First Respondent ought to have been aware of work being undertaken in a branch office. Further, he ought to have accurately identified the work types on the forms submitted to the SRA and to his insurers. The provision of inaccurate information to an insurer as to the nature of work undertaken might affect whether and on what terms the insurer was prepared to offer cover. The knowing provision of inaccurate information to the regulator or an insurer breached Principle 7 as the First Respondent had failed to comply with his legal and regulatory obligations. Such conduct failed to maintain the trust placed in the First Respondent and in the provision of legal services in breach of Principle 6. It also breached Principle 2; solicitors acting with integrity would not knowingly provide inaccurate information.

25.5 Mr Collins further submitted that in knowingly providing inaccurate information to the SRA and to the Firm's insurers, the First Respondent's conduct had been dishonest.

The First Respondent's Case

25.6 The First Respondent denied allegations 1.8 and 1.9. He explained that Greenbridge solicitors had undertaken 1 conveyancing matter in July 2015. After checking with the other branches, no other form of work was being undertaken other than personal injury work. The Second Respondent had discussed PPI work, and a couple of tests cases had been conducted, however the results indicated that no further PPI work would be carried out in future. The Second Respondent did not inform the First Respondent about any debt management work, which the Firm was not licensed to undertake. When he discovered that Greenbridge had undertaken other matters, he informed the Firm's insurers. The insurers confirmed that the Firm was covered for the additional work in any event. No adjustments were made to the Firm's premiums as a result of that work. The additional matters would have been reported to the SRA on the next return.

25.7 Mr Dirks submitted that as regards the insurance proposal form, the First Respondent had made a mistake as to the breakdown of work. When the additional areas of work were discovered, the First Respondent declared this to his insurers. The error made by the First Respondent was non-consequential; the later declaration to his insurers had no effect on the policy. Further, the mistake was understandable as the additional matters formed perhaps 0.1% of the work the Firm undertook. As regards the forms submitted to the SRA, Mr Dirks highlighted that no question was asked of the First Respondent. The form simply stated areas of work, and did not specify whether it

was areas of work intended to be conducted, or areas of work already conducted. Mr Dirks submitted that by convention, firms usually stated the areas of work they had undertaken, but the section could include areas to be undertaken. The First Respondent interpreted the section as referring to future intention. When he completed the form in 2014, he intended to undertake 95% personal injury work and 5% family/matrimonial work. The information provided by the First Respondent to the SRA was not misleading. The First Respondent had not attempted, nor had he intended to mislead either the SRA or his insurers. His conduct had been honest and any errors he made were inconsequential.

The Tribunal's Findings

25.8 During cross-examination, the First Respondent explained that the 100% personal injury work declaration on the forms was the position the Firm "was moving to". He also stated that the Firm was looking to reduce its personal injury work and to move into other sectors. The Tribunal concluded that both positions could not be correct; either the Firm was moving towards 100% personal injury work, or it was trying to reduce the percentage of personal injury work and expand into other areas. The First Respondent also stated in his evidence that after discovering that Greenbridge was doing work other than personal injury work, he informed that office to stop that other work "except for maybe small claims". The Tribunal determined that even on the First Respondent's own case, he knew that the Firm was undertaking work other than personal injury work.

25.9 It had been stated that when completing the 2014 form for submission to the SRA, the First Respondent was intending to expand into family law. The Tribunal noted that in the letter of 6 October 2015, (an immigration matter) the solicitor with conduct described that she was from the Firm's family department. The First Respondent denied that there was any family department at a time, when according to his evidence, the Firm was expanding into family law. He also explained that the author of the letter wanted to undertake family and immigration work. Accordingly the Tribunal found that there was other such work undertaken by the Firm.

25.10 It was the First Respondent's case that he had authorised no work other than personal injury work. The additional work categories undertaken were expressly forbidden by him. The Tribunal did not accept that solicitors in branch offices would undertake work that had been expressly forbidden by the owner of the Firm. Nor did the Tribunal accept that the work being undertaken at Greenbridge was undertaken without the consent or knowledge of the First Respondent. The Tribunal accepted that the First Respondent was not aware of the other work streams being undertaken by the Second Respondent at Madison Legal. He had allowed that branch office to be set up and run by the Second Respondent entirely autonomously, and had taken very little (if any) interest in the work being done there. As detailed above, the First Respondent was not interested in where the money he received from Madison Legal came from, as long as it was paid. The Tribunal found that the First Respondent had, in effect, allowed that branch office to trade as a separate entity – he received payment for allowing that office to trade under his Firm's umbrella without taking any interest in, or any responsibility for, the work undertaken there.

25.11 The Tribunal found that the First Respondent's evidence as regards the work streams, the percentages of work, the intended areas of expansion and the First Respondent's knowledge to be contradictory. As detailed above, it was not possible that whilst working towards the Firm undertaking 100% personal injury work, the Firm was at the same time working towards reducing the percentage of personal injury work by expanding into other areas. It was not feasible that, having determined to move into family law, and having recruited a solicitor who wanted to practice in that area, the First Respondent had expressly precluded any work areas other than personal injury work.

25.12 The Tribunal considered that the inaccurate statements as to work streams on the forms to both the SRA and the Firm's insurer were made by the First Respondent when he knew those statements were inaccurate. Such conduct, it found beyond reasonable doubt, failed to comply with the First Respondent's legal and regulatory obligations. Compliance with those obligations required the First Respondent to accurately and honestly complete the forms; he failed to do so. His conduct also breached Principle 6; members of the public would expect a solicitor to complete forms for his regulator and insurer accurately and honestly. That such conduct lacked integrity was plain; no solicitor with integrity would knowingly put incorrect information on forms submitted to his insurer or regulator. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent's conduct was in breach of Principles 2, 6 and 7.

25.13 The Tribunal found beyond reasonable doubt, that the First Respondent had knowingly and deliberately included incorrect and inaccurate information on the forms submitted to the SRA and the Firm's insurers. The Tribunal found that reasonable and honest people would find that deliberately putting inaccurate information on forms submitted to an insurer or to a regulator was dishonest. Accordingly the Tribunal found allegations 1.8 and 1.9 proved beyond reasonable doubt, including that the First Respondent's conduct was dishonest.

26. **Allegation 1.10 - Between October 2015 and March 2016 the First Respondent paid, or caused or allowed to be paid, marketing fees to H&M and between October 2015 and February 2016 he paid, or caused or allowed to be paid, marketing fees to BETA for the introduction of personal injury work, in circumstances where the payment of fees was prohibited by section 56(1)(b) of LASPO, and in doing so breached s56(1)(b) of LASPO, Principle 7 of the Principles and Outcome 9.8 of the Code.**

The Applicant's Case

26.1 This allegation related to payments made to H&M and BETA, which, it was submitted, were payments made in breach of s56(1)(c) of LASPO.

H&M

26.2 The FIO identified that the Firm had paid fees to H&M for the introduction of personal injury work. The payments were made in specific round figure sums. On 4 May 2016, the First Respondent confirmed that there was no written agreement with

H&M who the Firm paid on a case-by-case basis. The First Respondent explained that the sums paid were for the cost of marketing.

26.3 Mr Collins submitted that where payments were made after the referral had been received, the payments were not for marketing, but were payments made for individual referrals in breach of LASPO. In making prohibited payments, the First Respondent breached Principle 7, as he failed to comply with his legal and regulatory obligations. Such conduct failed to achieve Outcome 9.8 of the Code: "You do not pay a prohibited referral fee".

BETA

26.4 The Firm made the following payments to BETA:

- £2,000 on 17 October 2015 in relation to 12 clients;
- £1,000 on 19 November 2015 in relation to 7 clients;
- £2,000 on 22 December 2015 in relation to 11 clients;
- £1,000 on 15 January 2016 in relation to 8 clients;
- £2,000 on 8 and 19 February 2016 in relation to 10 clients.

26.5 The payments were allegedly in accordance with a "marketing agency agreement" between the Firm and BETA dated 1 July 2015. Clause 2.1 of that agreement stated that BETA would provide marketing services for 4 weeks or until the agreement ended. Clause 3.1 stated that the Firm would pay a marketing fee of £8,000 for a period of 12 weeks. Clause 5(a) stated that the total cost of the marketing fee was £8,000 for a 12 month campaign period. Clause 4 of the agreement stated that BETA would promote the Firm to the best of its ability "to people who have suffered some form of personal injury" and would "transfer potential clients calls" to the Firm.

26.6 During his interview, the First Respondent explained that BETA supplied the Firm with a client and accident report form. The Firm would then contact the client directly following receipt of that form. The First Respondent also explained that the marketing paid for consisted of leaflets. Mr Collins submitted that £8,000 was not a reasonable amount to pay for leaflets.

26.7 The Tribunal was referred to the SRA guidance on the prohibition on referral fees. Paragraph 23 of the guidance stated: "If a payment is made for each "lead" or the payment varies according to the number of referrals made, this is likely to suggest that the payment is for the referrals rather than for the marketing. Even if there is no specific number of leads guaranteed the solicitor would need to be satisfied that the payment they are making is reasonable in view of the services being provided."

26.8 Mr Collins submitted that notwithstanding that the agreement was called a "marketing agency agreement", operationally, the payments in fact amounted to referral fee payments. The agreement stated that the amount of any payment the Firm should make to BETA would be "calculated by reference to [the] recommendation" and that BETA would not "seek any consideration from the Firm over and above the agreed recommendation fee".

26.9 Given that the payments were, in fact, prohibited referral fee payments, it was submitted that the Respondent had breached LASPO, Principle 7 and failed to achieve Outcome 9.8 as alleged.

The First Respondent's Case

26.10 The First Respondent admitted that the payments made to H&M were referral fees in contravention of LASPO and Principle 7. He also admitted that he had failed to achieve Outcome 9.8.

26.11 The First Respondent denied that the payments to BETA were referral fee payments. The payments were made in accordance with the marketing agency agreement. He did not consider that the payments made were referral fees. He had kept a list of the clients and the amounts paid so as to assess the cost per case and profitability of the marketing fees paid.

26.12 The First Respondent explained that BETA marketed themselves to the Polish community; he was able to take advantage of that as he had a Polish speaker at the Firm. The First Respondent explained that the money paid to BETA was divided among the files received from their marketing effort to see how it affected average profits on each case taken on. That was why the figures quoted varied from case to case.

26.13 The contradictory clauses in the agreement had not been noticed; they would have been corrected if they were. The correct time period was 12 months as detailed in clause 5(a) and not 12 weeks as detailed in clause 3.1. The First Respondent stated that whilst the agreement referred to a "recommendation fee", he did not consider that the provision related to referral fees.

26.14 Mr Dirks submitted that the reference to a recommendation fee within the agreement was not evidence that the fees paid were referral fees. The agreement was clearly labelled as a marketing agreement, and it was the First Respondent's evidence that he considered the payments made to be marketing fee payments. The Applicant relied on the list produced by the First Respondent as evidence of the payments being referral fees. The First Respondent's evidence had been that he listed the clients and amounts so as to analyse the profitability/cost of the marketing fees paid per client.

The Tribunal's Findings

26.15 The Tribunal found beyond reasonable doubt that the payments to H&M were referral fee payments in breach of LASPO and Principle 7 of the Principles. The First Respondent also failed to achieve outcome 9.8. The Tribunal found the First Respondent's admission to have been properly made.

26.16 The Tribunal considered the agreement and noted the internal contradictions. Clause B(a) stated:

> "Before making a recommendation [BETA shall] give the client all relevant information concerning the recommendation, in particular, the fact that [BETA] have a financial arrangement with the firm, and the amount of any

payment the firm shall made to [BETA] calculated by reference to that recommendation"

26.17 Clause 4.6(j) stated that BETA would not "seek any other consideration form the firm over and above the agreed recommendation fee". The Tribunal considered that these clauses demonstrated the true purpose of the agreement. It did not accept Mr Dirks' submission that as there was no individual fee detailed in the agreement, these clauses were "superfluous".

26.18 The Tribunal did not accept that £8,000 was paid by the Firm to BETA for marketing fees in the way of leaflets. During cross-examination the First Respondent accepted that £8,000 for leaflets was "excessive".

26.19 In his evidence the First Respondent confirmed that he was aware of the SRA's guidance as regards referral fees. He explained that he had been involved in the drafting of the agreement. The Tribunal determined that the agreement was intended to circumvent the regulations as regards the payment of referral fees. It found that the marketing agency agreement was, in everything but name, a referral fee agreement, and that the terms of the agreement were for the payment of referral fees. Accordingly the Tribunal found beyond reasonable doubt that the payments to BETA were referral fee payments in breach of LASPO and Principle 7. Further, the First Respondent had failed to achieve outcome 9.8. Accordingly, the Tribunal found allegation 1.10 proved beyond reasonable doubt in relation to both H&M and BETA.

27. **Allegation 2.1 - In or around September 2015 and July 2016 the Second Respondent misappropriated the sum of £140,731.97 from monies held in a client account on behalf of Company T, and in doing so breached Principles 2, 4, 6 and 8 of the Principles and Rules 6 and 20 of the SAR.**

It was further alleged that the Second Respondent's conduct was dishonest.

The Applicant's Case

27.1 On 13 June 2016 WLL, the solicitors acting for Company T, alleged that approximately £140,731.97 had been misappropriated by Madison Legal. WLL explained that Company T was a debt management company providing debt advice and administering debt settlement in the UK.

27.2 An analysis of the accounts of Madison Legal showed sums in the total amount of £140,731.97 being transferred from the Madison Legal client account to the office account between September 2015 and March 2016. Those monies were then transferred from the office account to another account ending 2672. The sum of £390,431.24 was also transferred in 2 separate payments to the Firm's head office account.

27.3 During his interview, the Second Respondent was provided with a copy of the accounts showing the transfers. In an email dated 13 July 2016, he stated that it would have been "impossible" for him to have made some of the transfers, as he was "in meetings", "working with Cheshire Fire and Rescue", "in Wales" and that there were "probably other dates where it would have been impossible make (sic) transfers

due to child care or having other commitments or being at hospital appointments ... Transfers may have been [Company T] staff or BLL staff".

27.4 Following intervention into the Firm, the Applicant's intervention agents confirmed that the Second Respondent was the sole signatory on Madison Legal's office account, and that all transactions had been made using the Second Respondent's online banking membership number.

27.5 In his 24 June 2017 response to the SRA's s.44B Notice, the Second Respondent explained that the account ending 2672 was "an office account of Madison Legal for disbursements/fees". He further explained that the name of the account may have varied over time, and that he was "unsure who had control of it as there were changes requested with respect to banking which were never realised".

27.6 On 5 January 2018, Barclays, with whom the account ending 2672 was held, confirmed that the account belonged to Perren Consultants Ltd. Mr Collins submitted that the account was therefore not "an office account of Madison Legal" as stated by the Second Respondent. Perren Consultants Ltd was the new name for Minus 5 Media ("M5M") following notice of a change of name on 31 October 2016. The Second Respondent was a director of M5M from 1 November 2014 to 25 January 2016, and again from 9 September to 14 October 2016. Mr Collins submitted that £95,000 of the shortfall was sent to M5M when the Second Respondent was a director of that entity. Barclays also confirmed that the Second Respondent was the only signatory of the account ending 2672 at the time the transactions were made. It was submitted that there was no reason for the transfers made to M5M.

27.7 The Second Respondent had further argued that Madison Legal had a right to charge Company T fees, however clause 3.1 of the JVA provided that Company T would pay Madison Legal a retainer for legal services on a monthly basis. Clause 3.4 provided that separate accounts would be operated to "receive and administer all income received" from clients as specified in the Client Plan. Clause 5.1 of the Client Plan made it plain that the only payments from the account would be payments to "creditors in accordance with the Debt Settlement Plan". Mr Collins submitted that these clauses made it clear that the fees due to Madison Legal would not come from the client account.

27.8 Mr Collins noted that the Second Respondent had attached a number of invoices to his statement. However, those invoices were from M5M to BLL and came nowhere near the amount of £140,000.

27.9 It was submitted that the Second Respondent had misappropriated the sums as alleged. In doing so, he had plainly breached the Principles and SAR. It was not in the best interests of Company T for its monies to be misappropriated. The public expected solicitors to treat client monies as sacrosanct and not to misappropriate those monies. Thus the Second Respondent had breached Principles 4 and 6. The use of those monies for the Second Respondent's own purposes amounted to a breach of Principle 8 as he failed to carry out his role in accordance with principles of good governance and risk management.

27.10 The Second Respondent's conduct was plainly in breach of Principle 2, as he had failed to adhere to the ethical standards of the profession. The misappropriation of client monies breached the SAR. The monies had not been withdrawn from the client account in accordance with Rule 20.1. Pursuant to Rule 6.1 of the SAR, the Second Respondent was under a duty to ensure compliance with the SAR. He failed to do so.

27.11 Mr Collins submitted that the Second Respondent knowingly used client monies for his own benefit. That such conduct would be considered to be dishonest was plain.

The Second Respondent's Case

27.12 In his statement, the Second Respondent explained that "Company T was not a client of BLL. As an FCA regulated firm and under the JVA, Company T was responsible for "accountancy" of client funds." He was "not attempting to dismiss the seriousness of the allegations raised by Company T" or how the matter had "been frustrated by complex dynamics of the actors involved".

27.13 He argued that:-

- the complaints made were not made by any of the 566 clients listed;
- Company T, the customers and creditors were all aware of the "Legal Admin Fee";
- Company T was not providing services to the clients directly save for debt advice that was freely available from debt charities;
- BLL, via M5M, was providing advice. The client care letter stated "We will conduct our work on a fixed fee basis if this is not possible then ML will charge based on an hourly rate." This was calculated and reflected on the databases held by the SRA and its intervention agents. The FIO did not investigate these records despite having control and access to them;
- Company T's terms and conditions suggested it was carrying out the work, when in fact BLL was conducting the work;
- Company T did not distribute client monies to creditors – this was done by BLL (Madison Legal).

27.14 The Second Respondent submitted that Company T made no complaint until the FCA sought an audit of that business. As regards the account ending 2672, M5M was, in fact, owned by BLL. Any statements made in relation to that account reflected the "correct legal personality". Further, "banking and other aspects of the businesses using the Second Respondent's banking identity were due to failures to change or properly adopt these. Changes to mandates and other actions could of (sic) caused banking failure … Requests and changes submitted to the Banks may not of (sic) taken place leaving the Second Respondent's logins as the only active one live or available".

27.15 The Second Respondent stated: "it is not correct the Second Respondent was the sole signatory this does not conclude the transfers were made by the Second Respondent or that these were authorised by him." He explained that "other employees of the Firm had authority and access" and that all transfers made were "done under the instruction of the First Respondent".

27.16 As regards the allegation that his conduct was dishonest, the Second Respondent stated: "any funds transferred were not intended to be transferred improperly and the benefit of transfers served the clients in continuing to receive services during the break down (after termination) of the [JVA]." He explained that funds had not been transferred for his own benefit or dishonestly. Company T was aware of the transactions in issue but had protected its position.

27.17 The Second Respondent admitted "failing to exercise sufficient control between the parties to ensure clients best interests were protected and avoid the escalation of this matter to the SDT."

The Tribunal's Findings

27.18 The Tribunal examined the bank accounts. It found that monies had been transferred as alleged. The Tribunal considered the explanation and documents provided by the Second Respondent. Even on the Second Respondent's case, namely that M5M was acting as an agent for BLL, the invoices provided by him amounted to £44,179.70. This still left almost £100,000 that the Second Respondent had not accounted for.

27.19 The Tribunal did not accept his explanation that mandates having been submitted to the bank to change access details had not been actioned by the bank. Nor did it accept that the Second Respondent was not the sole signatory on the accounts, as detailed by the banks.

27.20 The Tribunal found the Second Respondent's explanations to be implausible, incomprehensible, irrational and incredible. The Tribunal found that the Second Respondent, as the sole signatory to the accounts and the director of the company into which the funds were transferred, had improperly transferred client monies for his own benefit. That such conduct was in breach of the Principles as alleged was plain. Improperly using client monies was contrary to their best interests in breach of Principle 4. Members of the public would not expect a solicitor to use client monies for his own purposes. In doing so the Second Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6. He had failed to conduct his role effectively and in accordance with proper principles of governance in breach of Principle 8. No solicitor, acting with integrity would utilise client monies for his own purposes; the First Respondent in so doing was in breach of Principle 2. The misappropriation of client funds was plainly in breach of the SAR as alleged.

27.21 The Tribunal had found that the Second Respondent had consciously and deliberately transferred client monies to use for his own benefit, when he knew that to do so was wrong, and in breach of the Rules. The Tribunal found beyond reasonable doubt that ordinary and decent people would consider that the use of client monies in this way was dishonest. Accordingly, the Tribunal found allegation 2.1 proved beyond

reasonable doubt, including that the Second Respondent's conduct had been dishonest.

28. **Allegation 2.2- The Second Respondent allowed a third party, Company T, to have access to the Firm's client account, and in doing so breached Principles 2, 6, 8 and 10 of the Principles.**

The Applicant's Case

28.1 During his interview with the FIO, the Second Respondent was asked who had authority to make transfers from the Madison Legal client account to its office account. The Second Respondent named a number of people at BLL as well as a director for Company T.

28.2 As detailed above, Barclays confirmed that the Second Respondent was the only signatory on the accounts. Mr Collins submitted that in the circumstances, the Tribunal could be sure that anyone else with access to the accounts had been granted that access by the Second Respondent. Further, the Tribunal could also be sure that Company T had access to the client account as WLL, in its complaint to the SRA, had attached copies of the client account that had been accessed by Mr K of company T.

28.3 Mr Collins argued that the public expected solicitors to keep clients' funds safe and secure, and not to let unregulated third parties have access to client accounts in which client funds were kept. In allowing such access, the Second Respondent had breached Principle 6. He had also failed to act in accordance with good governance principles in breach of Principle 8, and failed to protect client assets in breach of Principle 10.

28.4 Such conduct was also lacking in integrity in breach of Principle 2. The security of sums held on behalf of clients was a core responsibility for a solicitor. Allowing third parties who were not subject to supervision or regulatory oversight to have access to such funds amounted to a clear and knowing breach of the ethical standards of the profession.

The Second Respondent's Case

28.5 As detailed at Paragraphs 27.14 and 27.15 above, the Second Respondent (i) did not accept that he was the sole signatory of the accounts, and (ii) submitted that changes made to the mandates submitted to the Bank may not have taken place.

The Tribunal's Findings

28.6 The Tribunal found that the documents from Barclays evidenced that the Second Respondent was the sole signatory on the accounts. Even on his own account, he was aware that Company T had access to the accounts, as explained by him to the FIO during his interview.

28.7 The Tribunal agreed with the submissions of the Applicant; it was a core duty of a solicitor to protect client money. This duty included not allowing third parties access to client money, or to accounts in which it was held. The Tribunal found beyond reasonable doubt that the Second Respondent had breached the Principles as alleged,

for the reasons submitted by the Applicant. Accordingly, the Tribunal found allegation 2.2 proved beyond reasonable doubt.

29. **Allegation 2.3 - On or about 3 November 2016, the Second Respondent knowingly made misleading statements to the SRA, in relation to whether he was proposing to manage a law firm, when he had already applied to set up a recognised body known as Robertson & Co Solicitors Ltd, and in doing so breached Principles 2, 6 and 7 of the Principles.**

It was further alleged that the Second Respondent's conduct was dishonest.

The Applicant's Case

29.1 On 10 August 2016, the Second Respondent incorporated a company called Robertson and Co Solicitors Ltd. He was the sole director of that company. The nature of the business was listed as solicitors. In September 2016, the Second Respondent made an application to the SRA for authorisation of Robertson and Co Solicitors Ltd as a Recognised Body.

29.2 In a letter to the SRA dated 3 November 2016, the Second Respondent stated that he was not proposing to open a firm, nor was he proposing to manage a firm given his commitment as a firefighter with Cheshire Fire and Rescue.

29.3 Mr Collins submitted that in knowingly providing inaccurate information to the SRA during the course of its investigation, the Second Respondent failed to comply with his obligation to co-operate openly with his regulator in breach of Principle 7. Such conduct failed to accord with the ethical standards of the profession in breach of Principle 2. Further, such conduct was dishonest. The Second Respondent knowingly made misleading statements to the SRA that he was not proposing to manage a law firm, when at the same time he had an application pending for authorisation of Robertson and Co Solicitors Ltd.

The Second Respondent's Case

29.4 The Second Respondent did not address this allegation in his statement.

The Tribunal's Findings

29.5 The Tribunal noted that on 14 October 2016, the SRA sent the Second Respondent an email in which it was suggested that conditions would be placed on his practising certificate. In his letter in response dated 3 November 2016, the Second Respondent stated:

> "It is entirely inappropriate to dictate that I must be employed. Whilst I am not proposing opening a firm at this time … to impose such a condition on the back of conflicting information … would imply some culpability on my part. This is denied"; and
>
> "I am not proposing to manage a firm given my commitment with Cheshire Fire and Rescue …"

29.6 On 2 September 2016, the Second Respondent had submitted an application for authorisation of the earlier incorporated Robertson and Co Solicitors Ltd. That application was supported by the following:

- A Business Plan;
- Key Financial Information;
- A copy of the Certificate of Incorporation; and
- A copy of a PII quotation

29.7 The application for authorisation was for the body to start trading on 1 October 2016. The intended work percentages were 85% personal injury, 10% immigration and 5% litigation. The Second Respondent had named himself as the COLP and COFA.

29.8 The Tribunal determined that the documentary evidence clearly demonstrated that at the time he was telling one department of the SRA that he did not intend to open/manage a firm, he had an application pending in another department, seeking authorisation of his company as a recognised body. The documentary evidence demonstrated that the Second Respondent had provided misleading information to the SRA in his letter of 3 November 2016. The Second Respondent knew at that time that he was awaiting the outcome of his pending application. He had created and submitted business plans, including cashflow forecasts for the period September 2016--August 2017.

29.9 The Tribunal found beyond reasonable doubt that in providing misleading information to the SRA, the Second Respondent had failed to comply with his obligation to deal with the SRA in an open and co-operative manner, and had failed to act with integrity. No solicitor of integrity would deliberately mislead the SRA in an attempt to avoid conditions on his practising certificate. That such conduct was also dishonest was plain. Ordinary and decent people would find deliberately misleading the SRA to be dishonest. Accordingly, the Tribunal found allegation 2.3 proved beyond reasonable doubt, including that the Second Respondent's conduct was dishonest.

Previous Disciplinary Matters

30. There were no previous disciplinary findings before the Tribunal for either Respondent.

Mitigation

31. The First Respondent

31.1 The First Respondent had specialised in personal injury work throughout his career. The Company T matter was a "mess". In respect of allegation 1.1, the First Respondent had no direct involvement, however he should have been more aware of the accounts being operated by the Second Respondent. The Second Respondent was "deceitful – a clever and consummate liar". Company T had started out being wholly owned by the Second Respondent. The First Respondent was "as much a victim as anyone else" as regards Company T and the Second Respondent. As regards allegation 1.2, this had been admitted by the First Respondent and rectified.

There was no allegation of missing monies from any of the other offices, and no client complaints regarding the standard and conduct of work. The First Respondent was trying to introduce a new accounts system when the "Company T mess fell on him". As regards allegation 1.5, the First Respondent had admitted this. There was no shortage on the client account. Errors had been made and corrected. The Tribunal had not found his conduct in this regard to have been dishonest. In respect of allegation 1.6, the First Respondent was wrong in his belief that he was not required to submit accountants' reports. The Tribunal had found allegations 1.8 and 1.9 proved. There was no evidence that any of the matters that were not personal injury matters were conducted to completion, however those files having been opened, the First Respondent should have declared those other work areas but he did not. As regards allegation 1.10, it was true to say that the form of agreement used and the manner in which referral/recommendation fees were paid was in breach of LASPO.

31.2 Mr Dirks further submitted that although the Tribunal had found allegations 12.8 and 1.9 proved, these were "not the most serious" as there were not huge amounts of work. The First Respondent was trying to move away from that work and away from the recommendations which were the substance of allegation 1.10.

31.3 Mr Dirks noted that the Tribunal's process when considering sanction was to start at the lowest and work its way up to the most appropriate sanction. He submitted that when considering sanction for the First Respondent the Tribunal should "start at the lowest and stop there". He suggested that the breaches found proved were not such that the First Respondent should be struck off – what was needed was help and assistance. This was not like other serious cases where there had been financial gain.

31.4 As regards exceptional circumstances, it was submitted that the First Respondent was the victim of a fraudster. The dishonesty as regards allegations 1.8 and 1.9 was very minor.

32. The Second Respondent

32.1 The Second Respondent asserted that he had made every effort to comply with requests for information as required. He had written to the SRA to consent to being struck off the Roll. Alternatively, his licence should be suspended until had had recovered from his illness which would pose a risk should he be allowed to practice even with conditions on his licence.

Sanction

33. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

34. The First Respondent

34.1 The Tribunal considered that the First Respondent had, in effect, "brass-plated" the trading styles of others. He left them to carry out work with little if any supervision.

Whilst he undertook supervision of some files, and made some visits to the offices, he paid very little attention to the finances of the subsidiary offices. His main concern was that he received monies from those offices each month. The Tribunal found that the First Respondent's motivation for much of his misconduct was to avoid regulatory control. Allegations 1.2, 1.3, 1.6, 1.8, 1.9 and 1.10 all related to the First Respondent's intention to avoid his professional and regulatory responsibilities. He had failed to submit any accountants' reports and failed to declare that he held client money so as to evade the scrutiny of the SRA as regards the protection of those monies. The Tribunal found that save for allegations 1.1, the First Respondent's actions were planned. He was in control and directly responsible for the misconduct found proved save for allegation 1.1. As regards allegation 1.1, the Tribunal found the First Respondent's lack of interest in the finances of Madison Legal had contributed to the Second Respondent's ability to misappropriate client monies. His was fully culpable for his admitted failures in that regard. He was an experienced solicitor and was fully culpable for his conduct.

34.2 He had caused significant harm to the reputation of the profession. His lack of supervision of Madison Legal enabled the Second Respondent to misappropriate over £140,000. Had he complied with his obligations, the misappropriation might have been prevented. Harm had been caused to Company T, who had been forced to raise the matter with the Applicant, of which they became aware as the Second Respondent had allowed them access to the account.

34.3 The First Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

34.4 Further aggravating features were that the conduct had continued over a period of time, was deliberate, calculated and repeated. The First Respondent knew that he was in material breach of his obligation to protect the public and the reputation of the profession.

34.5 In mitigation, the Tribunal took account of the fact that individual clients (other than Company T), had not suffered any loss. There was no shortfall on the client account. The First Respondent had demonstrated some insight into his misconduct, and had made a number of admissions both prior to, and during the course of the proceedings.

34.6 Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. Given its findings of dishonesty, the Tribunal considered that Mr Dirks' submission that the First Respondent should receive no order (or a reprimand), was wholly unrealistic. Such a submission ran entirely contrary to caselaw and did not take account of the Tribunal's Guidance Note on Sanctions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

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

34.7 The Tribunal did not find any circumstances that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. Even if the Tribunal had accepted the submission that the First Respondent was the victim of a fraud by the Second Respondent, this only applied to allegation 1.1. It did not apply to any other allegation, and in particular, did not apply to the Tribunal's findings of dishonesty. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the First Respondent off the Roll of Solicitors.

35. The Second Respondent

35.1 The Tribunal found that the Second Respondent was motivated by personal financial gain. His actions were planned and were in breach of the trust placed in him by Company T to safeguard client monies. He had direct control and was solely responsible for his misconduct. Whilst he was not vastly experienced, he was aware that he must not use client monies for his own purposes. The Second Respondent's misconduct had caused substantial harm to the reputation of the profession. His dishonesty included the misappropriation of client monies. It had also caused direct harm to Company T. The harm caused by his misconduct was foreseeable. His misconduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. The Tribunal found his misconduct to have been deliberate, calculated and repeated over a period of time. The Second Respondent knew that his misconduct was in material breach of his obligation to protect the public and the reputation of the profession. The Tribunal found no mitigating features.

35.2 Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal did not find any exceptional circumstances (and indeed none were submitted) that were enough to bring the Second Respondent in line with the residual exceptional circumstances category referred to in Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Second Respondent off the Roll of Solicitors.

Costs

36. Mr Collins applied for costs in the sum of £56,952.50. Mr Dirks submitted that the First Respondent was of limited means. He was in receipt of welfare benefits. He had no capital, savings or income. His wife earned a small salary and was in receipt of a small pension. The matrimonial home was under threat of repossession. Mr Dirks did not dispute the quantum claimed.

37. The Tribunal considered that the costs claimed were appropriate as regards the nature and complexity of the case. It considered that the case arose as a result of the way the First Respondent had chosen to run his practice. There was no individual element of the case that could have been isolated from the others. The Tribunal determined that the matters found not proved were properly investigated and properly brought. The Tribunal ordered that the Respondents pay the costs in full, such costs to be paid on a joint and several basis.

Statement of Full Order

38. The Tribunal Ordered that the First Respondent, JAMES O'CONNOR, 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 £56,952.50, such costs to be paid on a joint and several basis with the Second Respondent.

39. The Tribunal Ordered that the Second Respondent, GILES GUY ROBERTSON, 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 £56,952.50, such costs to be paid on a joint and several basis with the First Respondent.

The Tribunal further Ordered that the Second Respondent alone pay additional costs in the sum of £616.00.

Dated this 28th day of May 2019
On behalf of the Tribunal

P. S. L. Housego
Chairman