# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11848-2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

ALEXANDER ZIVANCEVIC Respondent

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Before:

Mr J. P. Davies (in the chair)
Mr P. Jones
Mr S. Howe

Date of Hearing: 11 December 2018

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**Appearances**

Rory Mulchrone, counsel, of Capsticks Solicitors LLP, 1 St George's Rd, Wimbledon, London SW19 4DR, for the Applicant

Maurice Rifat, counsel, of 1 Chancery Lane, London WC2A 1LF, for the Respondent

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## JUDGMENT

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**Allegations**

1. The allegations against the Respondent, formerly of Hoffman-Bokaei-Moghimi Solicitors ("the Firm"), made by the Applicant were set out in a Rule 5 Statement dated 18 July 2018 and were as follows:

1.1 That by requesting a client of the Firm make a payment into his personal bank account and then failing to notify the Firm of the payment and failing to transfer the payment to the Firm he breached:

- Principle 2 of the SRA Principles 2011 ("the Principles"); and/or
- Principle 6 of the Principles.

1.2 Dishonesty was alleged in relation to allegation 1.1, however, proof of dishonesty was submitted not to be required for any of the allegations of misconduct.

**Documents**

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

Applicant

- Rule 5 Statement dated 18 July 2018 and exhibit 1
- Statement of costs at issue dated 18 July 2018 and updated schedule of costs to the final hearing dated 10 December 2018

Respondent

- Respondent's witness statement dated 23 August 2018
- Respondent's skeleton argument dated 10 December 2018
- Letter to the Applicant dated 7 December 2018 (enclosing a further letter dated 11 October 2018)
- Respondent's schedule of costs dated 10 December 2018
- Employment expenses and income spreadsheet

**Factual Background**

3. The Respondent was admitted to the Roll of Solicitors on 3 October 2005. At the date of the hearing he held a current practising certificate, free from conditions. At the time of the alleged misconduct, the Respondent was engaged as a consultant at the Firm. He left the Firm in April 2017 and is currently employed as a director at Patron Law Limited, London.

4. In August 2017 the managing partner at the Firm sent a report to the SRA in relation to the conduct of the Respondent. The report alleged that the Respondent had received money direct from a client, and not accounted to the firm for that money.

5. It was agreed between the parties that Respondent's agreement with the firm was that he would bill his clients at a month end and present the bills to the firm for review. Upon payment of the bills, the Respondent was entitled to 50% of the profit costs.

**Witnesses**

6. The Respondent gave oral evidence. Written and oral evidence 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**

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

8. **Allegation 1.1: That by requesting a client of the Firm make a payment into his personal bank account and then failing to notify the Firm of the payment and failing to transfer the payment to the Firm he breached:**

   - **Principle 2 of the Principles; and/or**
   - **Principle 6 of the Principles.**

The Applicant's Case

8.1 The Respondent had conduct of a file for client "Mr T". The matter related to a claim arising from a housing dispute. When the Respondent left the Firm Mr T requested that his file stay with the Firm, rather than being transferred with the Respondent.

8.2 On 19 June 2017 Mr T contacted the Firm to request a breakdown of the monies he had paid to the Firm. Mr T advised that he had requested this information from the Respondent however the information had not been forthcoming. On 12 July 2017 the Firm provided Mr T with a breakdown of the monies it had received, and the disbursements paid.

8.3 On 13 July 2017 Mr T advised the Firm that he had also paid £900 on this matter and this was not accounted for in the Firm's email of 12 July 2017. The client file did not contain an invoice in relation to this £900 payment and there was no record of the payment on the client ledger. On 18 July 2017 Mr T supplied the Firm with the details of the account into which the £900 was paid. The information consisted of text messages between the Respondent and Mr T and an email confirming the relevant account details. It was alleged that the text messages showed that the Respondent had requested that the monies be paid into his personal account. Mr T also supplied a copy of his bank statement which showed that the transfer of £900 was paid to the Respondent's personal account on 1 July 2013.

8.4 It was alleged, and the Respondent accepted, that the £900 was paid by the client into the Respondent's personal bank account on 29 June 2013 at his request. The Respondent also accepted that he failed to notify the Firm of the payment and failed to transfer the payment to the Firm.

8.5 By receiving client monies directly into his personal bank account, failing to notify the Firm of the payment and failing to transfer the payment to the Firm, the Applicant alleged that the Respondent's intention was to retain the money for his own personal gain. The Respondent had confirmed during the Applicant's investigation that he had not repaid the £525 to his former Firm (the amount to which he stated they were entitled under the contract under which he was engaged) as there had been what he described as accounting issues since his departure in April 2017.

8.6 Mr Mulchrone, for the Applicant, submitted that the Respondent's account of the circumstances of the payment was not credible. Specifically, he submitted that the Respondent could have obtained the Firm's account details for Mr T to make the payment to the Firm as the initial text message about payment was sent around noon and not late in the day as the Respondent had stated during the investigation and so there would have been no difficulty obtaining the relevant details to pass on to Mr T. In addition, Mr Mulchrone submitted that given Mr T had made several previous payments to the Firm the Respondent could have asked him to do likewise with this £900 payment.

8.7 The Applicant relied upon the case of Wingate and Evans v SRA [2018] EWCA Civ 366 in which the Court held that in professional codes of conduct, the term "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. The underlying rationale being that the professions have a privileged and trusted role in society and in return they are required to live up to their own professional standards. The Court held that adherence to the ethical standards of one's own profession involves more than mere honesty and it was submitted that the duty of integrity applies not only to what professional persons say, but also to what they do.

8.8 It was submitted that society and other solicitor professionals would not expect a solicitor to request a payment of £900 into his personal account and then to fail to account for these monies in the way in which the Respondent did. It was alleged that the Respondent had ample opportunity between 29 June 2013 and 19 June 2017 to transfer the funds to the Firm and/or notify the Firm but that he did not do this. It was alleged that by remaining silent it should be inferred that it was the Respondent's intention to retain these monies for personal gain. The Applicant submitted that the Respondent had thereby failed to act with integrity in breach of Principle 2 of the Principles.

8.9 It was also alleged that the Respondent's actions were in breach of Principle 6 in that public confidence in the profession would be undermined by knowledge of the Respondent's actions in requesting a payment of £900 from a client into his personal bank account and failing to notify the Firm of the payment and failing to transfer the money to the Firm.

The Respondent's Case

8.10 Mr Rifat, for the Respondent, stated that the primary facts, namely that £900 was paid directly into the personal bank account of the Respondent by Mr T, at the Respondent's request, and that the Respondent failed to notify the Firm of the payment and failed to transfer the payment to the Firm, were agreed and were always agreed to by the Respondent. He noted that there was no allegation that the Respondent had attempted to conceal any matters from or avoid the investigation by the SRA.

8.11 The Respondent disputed that the above payment into his account and failure to account to the Firm was done for his own personal gain as alleged. The Respondent asserted that:

- Mr T instructed the Respondent at the Firm in March 2013;
- Mr T's dispute was against his landlord for failing to provide adequate hot-water;
- A letter of claim as drafted by the Respondent in April 2013 and a payment of £200 plus VAT was requested through the Firm and Mr T settled the payment request;
- Thereafter the Respondent engaged in substantial correspondence with the landlord's representative between April and 28th June 2013, and in respect of which the work amounted to substantially more than £900 and the communications touched on more than simply the state of the premises in which Mr T's lived but also matters involving his deposit;
- On Friday 28 June 2013, after a significant amount of work had been done on his case, Mr T informed the Respondent that he wanted to settle with his landlord and move out of his property on the Sunday (30 June 2013) in order to relocate to the USA. Mr T was a French national and the Respondent did not want him to move somewhere else, with no forwarding address being provided, without putting the Firm in funds for the work done; and
- Due to the time on the Friday night and the immediacy of the situation as explained to the Respondent by Mr T, the Respondent did not have the Firm's client account details to hand and for this reason gave him his own personal account details.

8.12 The Respondent's case was that he intended to pass the money onto the Firm. He had made it clear, and the client was fully aware, that Mr T was paying the money into the Respondent's personal account. Mr Rifat submitted that Mr T had previously, and on every occasion following the payment of the £900.00, paid money for disbursements into the Firm's client account. The Respondent continued to act for the client under a CFA which was entered into on 18 July 2013 and he was eventually successful in his case against his landlord with an award of c.£6,800 in his client's favour.

8.13 It was submitted that the request to pay £900 into the Respondent's personal account was made as a matter of expediency arising from the immediate concern that the client would depart to the USA without paying for the significant amount of work done. The Respondent's evidence was that the failure to account to the Firm was an oversight. He

had simply forgotten that he had personally received the relatively small one-off payment from Mr T.

8.14 During his oral evidence the Respondent accepted that his original text message about the payment had been made shortly after midday and not in the evening as he had previously informed the Applicant. He stated that when responding to the Applicant from memory he had recalled that the exchange was in the evening. He stated that on the Friday 28 June 2013 he was out of the office attending a mediation and did not have the Firm's account deals to hand or scope to access them.

8.15 Mr Rifat agreed with the Applicant that the test for conduct lacking integrity was set out in Wingate. Mr Rifat referred the Tribunal to paragraphs [75-87] of Wingate in which Rupert-Jackson LJ gave examples of lack of integrity and posed the general proposition that lawyers have to be careful not to mislead. A number of examples were taken from the authorities including:

- A sole practitioner giving the appearance of being a partnership and deliberately flouting the conduct rules;
- Recklessly but not dishonestly allowing a court to be misled;
- Subordinating the interests of the clients to the solicitor's own financial interests;
- Making improper payments out of the client account;
- Allowing the firm to become involved in conveyancing transactions that have the hallmark of fraud;
- Making false representations on behalf of a client.

8.16 The Respondent submitted that his actions were not in the same league as these examples. There was no hallmark of 'misleading' anyone. There was no complaint by Mr T himself who was fully aware that the money was being paid into the Respondent's personal account. If the Respondent was lacking integrity and/or trying to wrongly gain money for himself as alleged, it was submitted to be highly unlikely that he would have given his personal bank details to M T, who was no more than an 'arms'-length' client, and who could easily have mentioned this or raised the matter with anyone else at the Firm at the time. The Respondent further submitted that this was not a case of Mr T's case being subordinated or prejudiced by the Respondent's request; the Respondent achieved an excellent result for Mr T in his case.

8.17 Additionally, the Respondent asserted that the client account of the Firm was not being threatened by an improper withdrawal, it was simply a case of a small amount of money not being accounted for to the client account which was, furthermore, in practical terms was office money as the work had been done already. It was submitted there was no intermeddling or mixing or otherwise interfering with the money of other clients. Nor was the money standing in trust for Mr T.

8.18 The Respondent submitted that the only party prejudiced was the Firm. The complaint was raised by the Firm, who were the Respondent's ex-employer, not by Mr T or by a

member of the public. The Respondent submitted that the Firm was unhappy that he had left them for a new firm and the complaint was essentially an employment issue that arose from acrimonious issues involving the final account between them.

8.19 The Respondent submitted that the allegation from the Firm that he received the money for personal gain was intentionally damaging. The Respondent stated that the Firm had inaccurately alleged that he had taken the money when it was not required for the client matter. He submitted that this allegation was based on there being a CFA in operation at the time whereas in fact he stated that there was not. The £900 was received on 28 June 2013 and the CFA was entered into on 18th July 2013.

8.20 The Respondent submitted that forgetting to account for a small sum of money (which was in reality a sum of £375 excluding VAT once accounted to the Firm as per the consultancy agreement) as a one-off single incident of oversight did not amount to a lack of integrity on his part in circumstances where he had not attempted to hide or conceal any material facts or matters. He further submitted that such an act did not in any way undermine the public's confidence in the profession.

8.21 Mr Rifat submitted that there were degrees of culpability, and applying the correct standard of proof it was not possible to discount the reasonable explanation (which, by some distance he submitted, amounted to a reasonable doubt) that the payment was made in the circumstances of expediency and was not subsequently accounted for by the Respondent's honest forgetful oversight.

The Tribunal's Decision

8.22 The Tribunal accepted the Respondent's evidence that he made the request to Mr T to pay the £900 into the Respondent's personal account because Mr T was due to leave the country imminently. The Tribunal accepted that the Respondent had by then completed a significant amount of unbilled work. The Respondent and the Firm were entitled to bill Mr T for the work completed and Mr T had no complaint with the quantum of the bill, simply that it had not been included in the Firm's accounting summary.

8.23 The Tribunal accepted the Respondent's evidence that due to being out of the office, on public transport and heading to a mediation, he did not consider it practical to obtain the Firm's account details. The Tribunal did not accept that it was not in fact possible for the Respondent to obtain these details, but accepted this was his genuine belief at the time. The Tribunal did not consider that evidence to the requisite standard had been presented by the Applicant that there was any deliberate intent to deprive the Firm of the £900, either through the initial request or subsequent failure to account.

8.24 The Tribunal was, however, very concerned by the request from the Respondent to a client to pay money into his personal account. The Tribunal considered that there were no circumstances in which a solicitor should make such a request; the money was either client or office money and should be treated accordingly. Despite the pressures of work described by the Respondent in his evidence, the Tribunal considered it a serious failure on his part not to notify the Firm that he had made the request. The Tribunal did not accept that a simple notification of that fact was impractical.

8.25 The Tribunal considered the test in Wingate and concluded that such is the importance of probity and transparency with regards to money generally, not only client money, that the combination of making the request that the money be paid into his own personal account and his failure to notify the Firm of this promptly failed to adhere to the ethical standards of the profession and lacked integrity in breach of Principle 2 of the Principles. The Respondent then continued to act for the client for a further four years and the Tribunal considered that this would provide reminders of what was a highly unorthodox and ill-advised arrangement and present ample opportunity to correct the position. The Tribunal found beyond reasonable doubt that the breach of Principle 2 of the Principles had been proved.

8.26 The Tribunal considered that the failures summarised above would also undermine the trust placed by the public in the Respondent and in the provision of legal services. The public would rightly consider that every solicitor should take adequate care to prevent money being paid into their own personal account by clients, failing to notify their employer and then failing to account for the money over an extended period of time. The Tribunal found beyond reasonable doubt that the Respondent had accordingly breached Principle 6 of the Principles.

9. **Allegation 1.2: Dishonesty was alleged in relation to allegation 1.1.**

The Applicant's Case

9.1 The Applicant referred the Tribunal to the decision of the Supreme Court in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 which set out the appropriate test for dishonesty at paragraph [74]:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest".

9.2 When determining the actual state of the Respondent's knowledge or belief as to the facts it was submitted that the following particulars of alleged dishonesty, contained within an exchange of text messages between the Respondent and his client Mr T were relevant:

9.2.1 On 28 June 2013 at 12:06 the Respondent sent Mr T a text message stating "Santander — Alexander Zivancevic — Sort code [xx-xx-xx] — Ac: [xxxxxxxx] £900 — Thank you".

9.2.2 A further message from the Respondent to Mr T, on 29 June 2013 at 21.50, asked "Can you confirm you have sent the funds please. I don't appear to have

received them. If you have not sent them yet, can you do so and send me a quick text to confirm".

9.2.3 On the same day at 22:39, Mr T wrote "Hi Alex, the funds (900 GDP) should be in your account. Please let me know if you have received them".

9.2.4 At 22:56 on the same day Mr T again asked "Did you receive the funds?"

9.2.5 At 22:56 on the same day the Respondent confirmed "Funds have arrived. Many thanks".

9.3 The Applicant alleged that between 28 and 29 June 2013 the Respondent consciously requested the payment of £900 directly into his personal account. It was further alleged that the Respondent consciously and surreptitiously sought to circumvent the firms accounting process and the fee sharing agreement. It was alleged that by retaining the sum of £900 in his personal account without transferring the money to the Firm or notifying the Firm of the payment between 29 June 2013 and 19 June 2017 it was the Respondent's intention to retain this money for his personal gain. It was the Applicant's case that he failed to notify the Firm of the payment with the intention of concealing the payment.

9.4 It was submitted that as a consultant engaged by Firm the Respondent could readily have obtained the Firm's bank details, so payment could have been made directly to the Firm. It was alleged that he chose not to do this so payment could be made into his personal account. The Applicant alleged there was no genuine urgency for the payment and that the client was happy to pay the monies due and a forwarding address could have been requested. There was submitted to be no evidence that this was done or attempted.

9.5 It was submitted that ordinary, decent people would regard it as dishonest for a solicitor to provide a client with their personal account details and request payment of fees to be made directly to him rather than to the Firm, in circumstances where there was no legitimate basis for doing so. The Respondent was familiar with the Firm's accounting process and would have understood that it would never be permissible to request a client make direct payments of fees, circumventing the Firm's accounts process and then retaining those fees for personal gain.

The Respondent's Case

9.6 The Respondent agreed that the relevant test for dishonesty was now expressed in the case of Ivey. He submitted that the allegation of dishonesty must fail. The only matter relied on by the Applicant was stated to be the act itself, namely, receiving the £900 and failing to account to the Firm for it. The fact that he held the money from 2013 onwards to 2017 was relied on but was submitted not to be inconsistent with the Respondent having forgotten to account for it. The Respondent submitted that concluding he acted dishonestly simply from the act itself would be manifestly and dangerously overstating his culpability and ignoring the standard of proof required.

9.7 The Respondent submitted that the following factors rendered the possibility or probability of dishonesty to zero:

- The amount of money concerned was so relatively small as rendered it wholly unlikely that the Respondent would put his professional career in jeopardy;

- In almost all typical cases of dishonesty by a professional involving money either a significantly larger sum or a pattern of dishonesty involving small amounts of money would be present. There was no pattern or multiple occurrence in this case. It was submitted that the one-off appropriation of £900 cannot not be rationally explained by 'dishonesty'.

- Mr T was aware throughout that the money was being requested by the Respondent and to be paid into the Respondent's personal account. It was submitted to be utterly inconsistent and irrational for a dishonest fraudster to provide, in writing, details of his account with a request for a small sum of money to be paid into that account. There was no attempt to hide or divert the payment or to disguise the recipient or mislead as to the destination of the payment.

- The Respondent's explanation of 'oversight' in failing to remit the small sum of money to the Firm was a reasonable explanation and the delay in accounting for the money is as consistent with this explanation as it is with 'dishonesty'. If the sum of money was large or there were numerous occurrences of this pattern of behaviour then the Applicant would have some cogent evidence. However, it was submitted that there was none.

The Tribunal's Decision

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

- firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether his conduct was honest or dishonest by the standards of ordinary decent people.

9.9 As noted above in relation to allegation 1.1, the Tribunal accepted that the Respondent made the request to Mr T to pay the money into the Respondent's own personal account as he considered his client was about to leave the country and he did not wish either the Firm or himself to be left unpaid for the work completed to date. The Tribunal was not satisfied that the Applicant had presented evidence of intent when making the request to improperly retain the money. The Tribunal considered that the reasonableness of the inference it was being asked to make was undermined by the size of the payment and the fact it was a one-off. The Tribunal had found the request highly inappropriate, but considered that the Respondent genuinely believed that he, and the Firm, were entitled to the £900 requested.

9.10 Having carefully assessed the Respondent's account of the working day in question and the Respondent's approach to recovering the money from his client, the Tribunal found that the Respondent genuinely believed that due to the pressure of circumstances on him, as an interim measure, he was entitled to request that the money be paid to his own personal account. The Tribunal was not satisfied to the requisite standard that evidence of any intent to permanently retain the money had been proved. Applying the standards of ordinary, decent people to his actions given that belief, the Tribunal found that dishonesty was not proved.

9.11 Regarding the failure to account to the Firm for the money received, the Tribunal assessed the credibility of the Respondent's evidence that he simply forgot. Despite the fact that during his oral evidence he stated that he thought he had paid the money to the Firm whereas in his written submissions he had always maintained he forgot, the Tribunal did not consider that the inference of dishonesty it was being asked to draw by the Applicant was warranted to the requisite standard of proof. Whilst the Applicant produced documentary evidence suggesting that Mr T had asked the Respondent for an itemised account of the sums he had paid, which should have acted as a reminder for the payment made to his own personal account, the Tribunal could not be sure that due to the pressures or work and through accounting not being his domain the Respondent had not simply forgotten the payment as was his evidence. Accordingly, the Tribunal found that dishonesty was not proved in relation to the continuing failure to account to or pay the Firm.

**Previous Disciplinary Matters**

10. There were no previous Tribunal findings.

**Mitigation**

11. The Respondent had had a thirteen year legal career without any other blemish. He admitted the primary facts alleged by the Applicant and had cooperated with the investigation. The fact that he had squarely faced the difficult questions posed was submitted to indicate his character and to begin to repair the lack of integrity found by the Tribunal. It was submitted that there had been no motive of personal gain, as demonstrated by the Tribunal's findings on dishonesty, and that the Respondent's actions were the result of oversight.

12. It was submitted that viewed objectively the public may regard the crux of much of the ongoing failure to account to the Firm as essentially a private employment dispute such that it would not more broadly undermine public trust in the provision of legal services or the Respondent. The profession had not been subjected to serious public scrutiny as a result of the Respondent's actions.

13. The misconduct was a one-off event. It was submitted that it was a reasonable inference that the Firm would have reviewed all relevant files and that if there was any evidence suggesting any more misconduct this would have been sent to the Applicant.

14. It was submitted that whilst it was recognised that any lack of integrity was inevitably serious, an innocent failure to account for what amounted to £375 excluding VAT was

at the lower end of the spectrum. There was minimal harm to the Firm, and no harm to the client. It was also submitted that the period in excess of four years since the payment in which there had been no incidents whatsoever demonstrated that there was no reason for the Tribunal to be concerned about any repetition.

15. Financial information was provided by the Respondent which the Tribunal was invited to take into account.

**Sanction**

16. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

17. In assessing culpability, the Tribunal found that the motivation for the Respondent's request for the payment was to ensure that he and the Firm received payment for the work completed before his client left the country. The actions were spontaneous. The actions involved a breach of trust given that he was the Firm's consultant and that the request for money to be paid into his personal account was highly inappropriate notwithstanding the pressure of circumstances. The Respondent was entirely responsible for the circumstances giving rise to the breaches of Principles 2 and 6 and should have known that the arrangement was inappropriate given he had eight years' PQE at the time. The Tribunal assessed his culpability as moderately high.

18. When assessing the harm caused, the Tribunal considered that the principal harm was to the reputation of the profession. The Tribunal accepted the Respondent's submission that the harm caused to the Firm was minimal and that no financial harm had been caused to Mr T. The Tribunal considered that conduct lacking of integrity, in particular involving a payment from a client to a solicitor's personal bank account, was inevitably harmful to the reputation of and public trust in the profession.

19. The initial misconduct was aggravated by the fact that the Respondent did not take appropriate steps to remind himself about the unusual arrangement so that he could be sure the harm would be limited by being promptly rectified. As a reasonably experienced solicitor he should have known that it was unacceptable to ask a client to make a payment into his own personal account. The Tribunal noted that as at the date of the hearing the Respondent had not made good the money he had failed to pay to the Firm. The Tribunal did not consider that the Respondent displayed meaningful insight into the inappropriateness of his actions.

20. When considering mitigation, the Tribunal accepted this was a one-off episode and that he had accepted the underlying facts at an early stage when contacted by the Applicant.

21. Having assessed the misconduct as serious, the Tribunal then assessed the appropriate sanction. The Tribunal had found that the Respondent's actions had lacked integrity. Whilst the Tribunal had not found the Respondent intended to improperly retain the payment made to him, this was nevertheless a serious finding of misconduct involving a payment from a client in circumstances no solicitor should allow to happen. In view of this seriousness and the potential for damage to the reputation of the profession, the

Tribunal did not consider that No Order was an adequate sanction. Given the apparent lack of insight on the part of the Respondent, and the fact that the Tribunal did not consider the breaches to be minor, the Tribunal considered that a Reprimand was also insufficient to protect the reputation of the profession with the public.

22. The Tribunal considered that a fine was the appropriate sanction. The misconduct was serious and involved an improper payment requested from a client to a personal bank account. The Tribunal considered that in all of the circumstances a fine within Level 3 in the indicative bands contained within the Guidance Note on Sanctions was appropriate. Based on the financial information provided by the Respondent the Tribunal determined, as Mr Rifat had acknowledged on the Respondent's behalf, that no reduction based on inability to pay was warranted. The Tribunal determined that a fine of £15,000 should be imposed on the Respondent.

**Costs**

23. Mr Mulchrone applied for the Applicant's costs in the sum of £6,275 as set out in the updated schedule of costs dated 10 December 2018. Mr Rifat submitted that the 12 hours claimed for SRA supervision costs and the 16 hours claimed for Capsticks Solicitors' costs seemed excessive; the latter on the basis that Capsticks did not prepare the Rule 5 Statement. He proposed figures of 6 and 8 hours respectively.

24. In reply Mr Mulchrone submitted that the three and a half hours claimed for Capsticks' preparation for the hearing was reasonable and he noted that the Respondent's own costs figures were significantly higher than the Applicant's. He submitted that the costs claimed were reasonable in all the circumstances.

25. The Tribunal assessed the costs for the hearing. The Tribunal considered the Capsticks Solicitors' costs to be reasonable. The Tribunal considered that a modest reduction in the costs claimed to reflect the SRA supervision costs claimed and the preparation time for the dishonesty allegation was appropriate as the allegation was not proved, although the Tribunal considered the allegation properly brought. The Tribunal considered that these combined costs should be reduced by £525. The Respondent was accordingly ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £5,750.

**Statement of Full Order**

26. The Tribunal ORDERED that the Respondent, ALEXANDER ZIVANCEVIC, solicitor, do pay a fine of £15,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,750.

Dated this 31st day of January 2019
On behalf of the Tribunal

J. P. Davies
Chairman

Judgment filed
with the Law Society
on 01 FEB 2019