Neutral Citation Number: [2022] EWHC 2070 (Admin) (QB)

Case No: CO-2251-2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)
ON APPEAL FROM THE SOLICITORS DISCIPLINARY TRIBUNAL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/08/2022

Before:

THE HONOURABLE MR JUSTICE LINDEN

- -

Between:

CHARLES JAMES ETE **Appellant**

- and -

SOLICITORS REGULATION AUTHORITY LIMITED **Respondent**

- -
- -

Charles James Ete in person
Nimi Bruce (instructed by **Capsticks Solicitors LLP**) for the **Respondent**

Hearing date: 12 July 2022

- -

Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 10:30am on 1 August 2022.

MR JUSTICE LINDEN:

Introduction

1. This is an appeal from an order of the Solicitors Disciplinary Tribunal ("the SDT/the Tribunal") that the Appellant ("Mr Ete") be struck off the Roll of Solicitors.

2. Mr Ete was admitted as a solicitor in 1997. At the time of the events which led to the disciplinary proceedings against him, he was the sole equity partner and owner of Charles Ete & Co Solicitors, a firm established in 2004 and based in Barking in London ("the Firm"). He was also the sole principal and owner of Pride Solicitors Limited, a recognised body which he acquired in 2018.

3. By a decision dated 26 August 2021, the SDT upheld the following Allegations against Mr Ete:

> *"1.1 In or around May and July 2018 he caused or allowed payments to be made from the Firm's client account which were:*
>
> > *1.1.1 Made other than in accordance with Rule 20.1 of the SRA Accounts Rules 2011 ("the SARs");*
> >
> > *1.1.2 Improper; and in breach of Principles 2, 6, and 10 of the SRA Principles 2011 ("the Principles");*
>
> *1.2 In 2018 he caused, allowed, or acted in transactions which bore hallmarks of fraud, in breach of Principles 2, 6, and 10;*
>
> *1.3 In 2018 he caused or allowed a minimum client account shortage of £1,236,335.64 to arise on the Firm's client account, which was not replaced promptly on discovery or at all, in breach of Principles 2, 6 and 10, and Rules 6 and 7 of the SARs;*
>
> *1.4 In 2018 he caused or allowed the Firm's client bank account to be used as a banking facility in breach of Principles 2 and 6, and Rule 14.5 of the SARs;*
>
> *1.5 In 2018 he failed to exercise any or adequate supervision or control over an individual using the name of Person A, in breach of Principles 2, 6 and 8, and failed to achieve Outcome 7.8 of the SRA Code of Conduct 2011;*
>
> *1.6 In 2018 he failed to take any or adequate steps to verify the identity and regulatory status of the individual using the name of Person A before allowing said individual to practice as a solicitor and in doing so breached Principles 6 and 8;*
>
> *1.7 In 2018 he misled insurers in correspondence dated 10 July 2018 in breach of Principles 2, 6 and 8 (it was further alleged as an aggravating feature that the alleged actions were dishonest);*
>
> *1.8 In 2018 he failed to appoint a COLP (Compliance Officer for Legal Practice) and COFA (Compliance Officer for Finance and Administration) at Pride*

Solicitors, in breach of Principles 7 and 8 and Rule 8.5(b) and (d) of the SRA Authorisation Rules 2011.."

4. Allegation 1.9, that Mr Ete failed to cooperate fully with the SRA in the course of the intervention and investigation of the affairs of the Firm and Pride Solicitors, was dismissed.

5. The Allegations against Mr Ete which succeeded are connected but distinct:

   i) Allegations 1.1-1.4 are all based on the sale of two properties – at Prestwold Road and Morley Crescent - in which Mr Ete was instructed to do the conveyancing. These transactions went wrong owing to fraud on the part of the putative vendors, SC and MT respectively, who were Mr Ete's clients. In essence, they pretended to be the owners of the properties, purported to exchange contracts and complete the sales, and then instructed Mr Ete to transfer the purchase monies away to third parties as soon as they were received. The central criticism of him was that he had allowed this to happen as a result of serious mishandling of the conveyancing and mismanagement of the Firm's client account. Allegation 1.3 also raised issues about Mr Ete's oversight of certain additional property sales where the conveyancing had been carried out by Person A, who was purportedly a solicitor at Pride Solicitors. It is therefore linked to Allegations 1.5 and 1.6.

   ii) Allegations 1.5 and 1.6 relate to Mr Ete's checking and supervision of Person A, who had the conduct of a number of conveyancing files including the additional files which were the subject of Allegation 1.3. It transpired that he had stolen the identity of a genuine solicitor and had been involved in conveyancing which involved a similar scam to the one which was used in the cases of Prestwold Road and Morley Crescent.

   iii) Allegation 1.7 involves failure to declare potential claims which had been threatened by the solicitors for the purchasers in relation to the sale of Morley Crescent when filling out a professional indemnity insurance renewal form.

   iv) Allegation 1.8 is free standing and self-explanatory.

6. Importantly, the SDT found that Mr Ete breached Principle 2 – the duty to act with integrity – in relation to 5 of the charges (1.1-1.4 and 1.5). It also found that he acted dishonestly in relation to Allegation 1.7, the allegation of misleading the insurer. Seven of the Allegations which were upheld also involved breaches of Principle 6, the duty to behave in a way that maintains the trust of the public in the solicitor and in the provision of legal services. Principle 7 is the obligation to comply with legal and regulatory obligations; Principle 8 is the duty to apply proper governance and sound financial and risk management principles; and Principle 10 is the duty to protect client money and assets.

7. The SDT assessed Mr Ete's culpability as high and found that significant harm had been caused by his actions. Having regard to its finding of dishonesty and its findings of lack of integrity, the SDT concluded that the appropriate sanction was to strike Mr Ete off.

8. The Tribunal went on to order that Mr Ete pay costs in the sum of £64,260.

The hearing before the SDT

9. The 8 day hearing before the SDT took place on 8-12 March and 1-3 June 2021 before Mr E Nally, Mr P Jones and Ms EA Chapman. Mr Ete was represented by Mr Kevin Metzger of Counsel and the SRA was represented by Ms Bruce. The SDT received evidence from Ms Maskell, the SRA's Forensic Investigation Officer ("FIO"), who carried out the investigation into the Firm. There was also a written report from a second FIO, Mr David Payne, who conducted the investigation of Pride Solicitors. Mr Ete gave evidence, as did a salaried partner of the Firm who was, himself, subject to a charge. That charge was also upheld but is not the subject of this appeal and does not affect the issues which I am asked to determine.

10. The Judgment of the SDT runs to 59 pages. It is highly detailed, thorough and a model of clarity. The Tribunal dealt with a somewhat optimistic submission of no case to answer on each of the Allegations, which it rejected, before going on to determine each Allegation in turn.

The appeal

11. The "Amended Grounds of Appeal and Skeleton Argument", dated 14 September 2021, challenges the SDT's conclusions on each of the eight Allegations which were upheld (Grounds 1-8) as well as its conclusion on sanction (Ground 9). The SDT's order in respect of costs is also challenged (Ground 10). The Grounds of Appeal contain various arguments about the SDT's conclusions on the evidence in support of Mr Ete's overall submission that the case against him was not proved to the requisite standard and that, insofar as he made errors, he did so innocently rather than showing a lack of integrity; still less did he act dishonestly.

12. Mr Ete also submitted a supplemental skeleton argument which, he made clear, did not replace his pleaded case. However, this document developed his challenge to the decision of the SDT in relation to Allegation 1.7 and sanction in greater detail. In relation to the question of dishonesty, Mr Ete's submission was that the SDT did not focus, sufficiently or at all, on his evidence that he did not think there was any requirement for him to declare the information which the SRA alleged he should have declared. His overall submission was that the sanction of striking him off was overly harsh given that he had not acted dishonestly or without integrity – he had been duped by his clients and Person A - given that he had no previous disciplinary record after 20 years in practice, and given that he had been punished enough by being suspended for a period of 2.5 years whilst awaiting the outcome of the regulatory proceedings.

13. Mr Ete then appeared at the hearing before me and developed his submissions with skill, courtesy and good judgment, again emphasising his arguments on Allegation 1.7 and sanction but without abandoning his other grounds. Ms Bruce then took me through each of the grounds of challenge, written and oral, and made her submissions, before Mr Ete replied briefly.

14. In the light of the fact that the underlying factual bases for the Allegations can be placed in four groups, as I have indicated, I propose to deal with the Grounds of Appeal in the groups identified at [5(i)-(iv)] above. Before I do so, however, I will deal with the overarching legal framework within which the appeal is required to be

considered, and the principles relevant to Mr Ete's arguments. As will become apparent when I summarise the Judgment of the SDT in the present case, these principles present insuperable obstacles for those arguments.

Legal framework

The SDT

15. The SDT is an independent tribunal established under section 46 of the Solicitors Act 1974. Its members are appointed by the Master of the Rolls and they include practising solicitors of not less than ten years' standing: see section 46(3).

The jurisdiction and approach of the High Court in this type of appeal

16. Section 49(1) of the Solicitors Act 1974 provides a right of appeal to the High Court against an order of the SDT. CPR Rule 52.21 applies to such an appeal, which will therefore normally be by way of a review. As is well known, Rule 52.21(3) states that:

> *"(3) The appeal court will allow an appeal where the decision of the lower court was—*
>
> *(a) wrong; or*
>
> *(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."*

17. The Divisional Court confirmed in **Martin v Solicitors Regulation Authority** [2020] EWHC 3525 (Admin) at [26] that *"[wrong] means that there must be a material error of law, a material error of fact, or an error in the exercise of discretion"*.

18. An appellate court should not interfere with a finding of fact of the first instance court or tribunal unless satisfied that it is *"plainly wrong"*. In **Henderson v Foxworth Investments Limited** [2014] 1 WLR 2600 at [67] Lord Reed said, in relation to findings of primary fact that there must be:

> *"67. ..the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."*

19. As to the question whether a decision can be described as *"plainly wrong"*, at [62] Lord Reed also said:

> *"The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."*

20. In relation to cases such as the present, where the credibility of a witness (in this case, primarily Mr Ete) was in issue at first instance, it is worth noting **Cook v Thomas** [2010] EWCA Civ 227 at [48] where Lloyd LJ said:

> *"an appellate court can hardly ever overturn primary findings of fact by a trial judge who has seen the witnesses give evidence in a case in which credibility was in issue".*

21. In relation to evaluative judgments, I note the following passage from the judgment of the Court of Appeal in **Prescott v Potamianous** [2019] EWCA Civ 932 at [76]:

> *"… on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion'".*

22. It is also well established that an appellate court will accord due deference to evaluative judgements which are made by a specialist body about matters which are within its field of expertise. In **Solicitors Regulatory Authority v Day** [2018] EWHC 2726 (Admin) this principle was expressed as follows by the Divisional Court in relation to a decision of the SDT:

> *"71. The first consideration is that this is a decision of a specialist Tribunal, particularly equipped to appraise what is to be required, in the particular circumstances, of a solicitor by way of professional conduct. The appellate (judicial) court will be cautious in interfering with such an appraisal. The principle is well established on the authorities…."*

23. Decisions as to sanction are classically decisions which engage the judgment and expertise of a specialist regulatory body given that they involve an assessment of culpability and harm in the context of the standards required of the particular profession. Thus, in **Law Society v Salsbury** [2009] 1 WLR 1286 [30], Jackson LJ said this about the circumstances in which an appellate court will interfere with such a decision:

> *"… the Solicitors Disciplinary Tribunal must also take into account the rights of the solicitor under articles 6 and 8 of the Convention. It is now an overstatement to say that "a very strong case" is required before the court will interfere with the sentence imposed by the Solicitors Disciplinary Tribunal. The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere.."*

Dishonesty

24. It was agreed that the test in relation to dishonesty which the SDT was required to apply is set out at [74] of the decision of the Supreme Court in **Ivey v Genting Casinos (UK) Ltd** [2017] UKSC 67, where Lord Hughes JSC said:

> *"…. 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-under 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."*

Integrity

25. In **Solicitors Regulation Authority v Wingate & Another** [2018] 1 WLR 3969, Jackson LJ noted that integrity is a more nebulous concept than honesty and that it is not possible to formulate an all-purpose definition. However, at [97] he said:

> *"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 is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards."*

26. At [100] he said:

> *"Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."* (emphasis added)

27. At [101] Jackson LJ added that the duty to act with integrity applies to the deeds as well as the words of the professional, and he gave various examples of acting without integrity in the case of solicitors including:

> *"...(iv) Making improper payments out of the client account….*
>
> *(v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks of mortgage fraud…"*

28. At [102] he concluded:

> *"Obviously, neither courts nor professional tribunals must set unrealistically high standards…. The duty of integrity does not require professional people to be paragons of virtue."*

Sanctions where there is a finding of dishonesty or a lack of integrity

29. The position in relation to sanction where there is a finding of dishonesty was helpfully summarised by Coulson J (as he then was) as follows in **Solicitors Regulation Authority v Sharma** [2010] EWHC 2022 (Admin) at [13]:

> *"…looking at the authorities in the round, ..the following…points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll…. That is the normal and necessary penalty in cases of dishonesty... (b) There will be a small residual category where striking off will the a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, .. or other a lengthy period of time…; whether it was a benefit to the solicitor.., and whether it had an adverse effect on others.*
>
> *[14] …. It seems to me that it is the nature, scope and extent of the dishonesty itself that matters. Questions as to financial loss may however be relevant in considering whether a particular case falls within or outside the exceptional category to which the authorities refer."* (emphasis added)

30. As to what may constitute exceptional circumstances in this context, I note that in **Solicitors Regulation Authority v James** [2018] EWHC 3058 (Admin) Flaux LJ said this at [112]:

> *"The SDT having concluded that, notwithstanding mental health issues, each of the respondents was dishonest, I consider that it was contrary to principle for it then to conclude that those mental health issues could amount to exceptional circumstances. I agree…that, whilst in no sense belittling the stress and depression from which the respondents suffered, it was in no sense exceptional. It is sadly only too common for professionals to suffer such conditions because of pressure of work or the workplace or other, personal, circumstances. It is of course correct that issues of stress and depression (or other mental health issues) should be taken into account by the SDT in assessing whether there are exceptional circumstances… However, the presence of such mental health issues cannot, without more, amount to such "exceptional circumstances".*

31. As to sanctions for acting with a lack of integrity, in **Bolton v Law Society** [1994] 1 WLR 512 Lord Bingham said this at 518B-F:

> *"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty……If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below*

> *the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case…"* (emphasis added)

32. Lord Bingham went on to explain at 519B-E:

> *"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again…. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. … The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."* (emphasis added)

Allegations 1.1-1.4/Grounds 1-4

The SDT's findings as to the background

Overview

33. As noted above, the common thread in relation to the Prestwold Road and the Morley Crescent transactions was that the putative vendors for whom Mr Ete was acting were pretending to be the owners of the properties in question. Exchange and completion took place but title did not pass, and the purchase monies were paid away to third parties. The SRA's case was that the actual owners of the properties denied any knowledge of the purported sales. The focus of the Allegations was therefore on the steps taken by Mr Ete to confirm the identities of his clients, the extent of his due diligence more generally, the extent to which he reacted to warning signs and his scrutiny of his instructions, particularly in relation to the payments to third parties.

Prestwold Road

34. Mr Ete was instructed by the purported vendor, SC, in May 2018. The sale price was £98,499. Exchange and completion took place at 12.05pm on 25 May 2018. In its Judgment, the SDT summarised the history of Mr Ete's dealings with this matter, the detail of which it is not necessary to relate. But it included the following oddities.

35. SC dealt with Mr Ete by email. There was an attendance note, dated 21 May 2018, which stated that SC had attended the office and had brought his passport and utility bills, copies of which were made. He had also *"dropped signed TR1"* (the Land

Registry form used for transferring ownership of registered title). However, when the solicitors for the purchasers asked whether satisfactory identity checks had been completed, Mr Ete's reply of 22 May 2018 confirmed that they had been, by way of anti-money laundering ("AML") checks. He referred to SC's passport having been certified by another firm of solicitors whom he had contacted, but he did not refer to SC's visit to the Firm's offices the day before. The SRA submitted that the reason for this omission was unclear.

36. The AML check to which Mr Ete referred in his reply of 22 May had been carried out on 18 May 2018. The personal identity check was returned as *"identified"* but there was a warning that the date of birth of the subject could not be verified. There was also no match returned for the electoral roll.

37. Although the attendance note of 21 May 2018 said that SC had *"dropped signed TR1"* there was also an email of 21 May 2018 from SC which enclosed it. On 24 May 2018, there was then an email from Mr Ete to SC which requested that he sign the TR1 before an adult UK adult witness. There was then another email, dated 30 May 2018 (i.e. 5 days after completion), in which Mr Ete attached *"the TR1 form. Please urgently sign and get it witnessed…and return it to us urgently via 1st Class special delivery today. We….need this one signed with the original signature"*. The SRA submitted that it was not clear why SC was being asked to sign another TR1 after completion, when the documents on file suggested that at least one had been provided and, in any event, a binding contract had been entered into and payment had been made.

38. In the meantime, shortly before completion on 25 May 2018, SC had emailed Mr Ete stating *"Please transfer the proceeds of sale after your disbursements of my above property to the following account…..Pindi Car Centre Limited"*. On the same day, having received the funds from the purchaser, the Firm paid £96,099 to Pindi Care Centre Limited having deducted £2,400 in respect of its fees. A Companies House check carried out by Ms Maskell revealed no connection between SC and this company.

39. Mr Ete's position was that none of these matters caused him any concern and he did not carry out any other checks on the identity of SC or the third party. The AML results did not strike him as unusual. He understood that the payment to Pindi Car Centre was a personal investment being made by his client. He was not concerned by the lack of any connection in the records at Companies House as the relevant account was in the UK, and a connection between SC and company would not be revealed prior to the purchasing of shares in the company.

Morley Crescent

40. Mr Ete was instructed by the purported vendor, MT, in April 2018. The sale price was £350,000. Exchange of contracts took place on 8 June and completion was on 22 June 2018. Again, the SDT traced the history of Mr Ete's dealings with this matter which included the following oddities or red flags.

41. Mr Ete requested evidence of the identity of MT on 18 and 26 April 2018 but this was not provided. On 11 May 2018 Mr Ete received an email from MT which gave the name of a buyer and the address of ST Solicitors, and requested that contracts be sent

that day. Although he still had not seen any evidence of the identity of MT at this stage, Mr Ete immediately sent ST Solicitors a draft contract, a property information form, a contents and fittings form, office copies of the title deed and a plan of the property.

42. There was then an attendance note of MT attending the office on 14 May 2018 and bringing an original of a passport, and of copies being taken. The copy of the passport which Mr Ete retained recorded MT's sex as being male, which was at odds with her appearance in the passport photo, her name (which was a female name) and all other available information about her. There was also no middle name in the name in the passport, whereas there was in the name of MT in the official Land Registry office copy entries.

43. When contracts were exchanged with ST Solicitors, the signature of MT on the contract differed from the signature on the passport. There was an additional "L" in MT's name.

44. There were two AML checks on file. The first was on 11 June 2018 (i.e. 3 days after exchange). This check was *"passed"* but it revealed that the date of birth of MT could not be verified and there was no match on the electoral roll. The second was on 22 June 2018 (i.e. on the date of completion). Again, the check was *"passed"* but there were *"warnings"* which were that the date of birth entered conflicted with a data source and that MT had been found on a previous but not a current electoral roll.

45. On 22 June 2018, by email, Mr Ete requested details from MT as to where to pay the sale proceeds, and a forwarding address. MT replied that day with an attachment which purported to be an authorisation to pay the sale proceeds to a third party, Blue Management International Limited. Mr Ete requested written instructions and was provided with a handwritten note providing authority and giving account details. The signature on this note was spelled differently to the manuscript name below it in that it included an additional "p".

46. There was no document or other information on file relating to Blue Management International Limited until mid-August 2018. The proceeds of sale were nevertheless paid to this company on 22 June 2018 after Mr Ete had deducted £3,500 in respect of the Firm's fees. A subsequent check by Ms Maskell revealed no connection between MT and Blue Management.

47. Although the client care letter was sent out on 26 April 2018, it was not signed until 22 June 2018, after exchange and completion. MT did not appear to have raised any queries about why Mr Ete's fees were higher than would usually be charged for a conveyance of this nature.

48. Mr Ete's position was that none of these matters caused him any concerns or to make any additional inquiries. In interview with Ms Maskell on 17 December 2018, he said in relation to the instruction to pay the monies to Blue Management that he thought MT had said something about buying a care home. When Ms Maskell wrote to him on 21 December 2018 raising various queries, one of which was whether he could provide any further attendance notes, he produced one which noted a phone call from MT on 22 June 2018 in which she asked him whether he had received her email with

account details and, in answer to the question why she was paying Blue Management, told him that she was buying a care home and did not want to lose the deal.

49. However, on 3 July 2018 Mr Ete was informed that the purchaser of the Morley Crescent property was unable to obtain access. ST Solicitors asked various questions about Mr Ete's identification of his client but MT apparently refused to allow Mr Ete to provide them with evidence of her identity.

50. On 4 July 2018, ST Solicitors reported the Firm to the SRA. The nature of the complaint is apparent from the following passage from their report

> *"We believe that the firm of Charles Ete failed to carry out any identity checks or money laundering checks to verify that the seller was the person entitled to sell the property. Our client has not received good title and has suffered a loss of 350,000 through the falsity of the statement by Charles Ete that induced our client to purchase the property. The matter has been reported to our insurer and the metropolitan police"*

51. Mr Ete received various emails from ST Solicitors on 4 July 2018 including 3 which the SDT noted. One informed Mr Ete that the writer had *"now reported this crime to the police and placed our insurers on notice"*; a second stated that he had been in touch with a Police Chief Inspector and *"unless I receive satisfactory responses by 4pm today I am reporting you for fraud"*; and a third stated that the information provided by Mr Ete was inadequate, made reference to a fraudulent transaction and stated *"it has been reported to the police, SRA and our insurer"*.

52. Also on 4 July 2018, Mr Ete contacted his bank three times in the late afternoon to seek a recall of the sale proceeds. His efforts were unsuccessful.

The issues and the SDT's findings in relation Allegation 1.1

53. The issues under Allegation 1.1 were whether the payments from the Firm's client account which were made to Pindi Car Centre and Blue Management were in accordance with Rule 20.1 of the SRA Accounts Rules 2011 ("the SARs"), and whether they were improper and in breach of Principles 2, 6 and 10.

54. Rule 20.1 provides that *"Client money may only be withdrawn from a client account when it is…"* and a series of 11 alternative conditions or circumstances are specified. Mr Metzger, on behalf of Mr Ete, complained that the SRA had not particularised its case sufficiently in contending that none of the conditions was met but he did not, himself, identify the condition or conditions which he said were met. The SDT therefore considered all 11 conditions for itself to see whether there were any potential candidates, and it concluded that the only ones were (a) and (f). These permit payments which are:

> *"(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);…*
>
> *(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;"*

55. The SDT found that (a) was not satisfied:

> "*given the inconsistencies about the identification of both clients and given the instructions to make the payments to unrelated third parties was concerning in terms of the timing of the request, the urgency, the relative informality, the fact the payment did not relate in any way to the conveyancing transaction and the lack of any good reason at all why the payment should be made to the third party rather than to the purported clients, the payments could not be said to be "properly required""*

56. The SDT also found that condition (f) was not satisfied. Given the concerns summarised above, which meant that the instructions were inherently concerning, the brief and informal written instructions which had been provided were not sufficient and Mr Ete had not, himself, confirmed his instructions in writing.

57. Having reached the conclusion that Rule 20.1 had been breached, the SDT went on to consider whether there were breaches of each of the three Principles relied on by the SRA. Mr Ete's case was that he had done everything required to verify the identities of his clients, that he had relied on the AML reports, that the warnings in those reports had not been of concern to him and that the FIO evidence against him failed to understand conveyancing and the AML process. He had no reason to doubt that the clients were genuine, he had clear instructions to make the payments to the third parties, and the companies in question were in the United Kingdom. He genuinely believed that the payments were in accordance with the rules. Mr Metzger, on the other hand, emphasised that only 1% of Mr Ete's practice was in conveyancing and that Mr Ete acted in good faith on the basis of how matters appeared to him at the time.

58. The SDT also noted that Mr Ete did not accept, even in the light of all of the evidence and with the benefit of hindsight, that those who instructed him were not the genuine SC and MT. He suggested in evidence that those who claimed to be the true owners of the properties may themselves be imposters. The SDT said:

> *"Given that both purchases had failed, title did not transfer, and the solicitors acting for the intended purchasers were obliged to take steps to recover the purchase monies paid to (and out of) the Firm, the Tribunal considered that this showed a fanciful unwillingness or inability to objectively assess the evidence."*

59. This was one of a number of instances in which the SDT made findings about Mr Ete's credibility.

60. The SDT went on to note the *"red flags"* which I have summarised above and it noted that Mr Ete had declined to give the information on which his identification was based to the solicitors acting for the purchasers when queries and concerns were raised. It went on to find that the clear implication of the late checks carried out in relation to both purchases was that Mr Ete did have some concerns and some awareness of risk, but that he had nevertheless failed to investigate further. The payments to unrelated third parties, rather than to the clients themselves, was an additional risk despite Mr Ete being aware of the SRA's Warning Notice on the improper use of a client account as a banking facility.

61. As far as Principle 10 is concerned, the SDT concluded that there had been a failure to protect client money in that Mr Ete was sufficiently on notice that the transactions may be fraudulent. He should not have paid out the monies in the way that he did.

62. As far as Principle 6 is concerned, the SDT found the payments to be improper:

> *"The consequences for the intended purchasers who paid the money to the Firm and did not acquire title to the properties was very significant. Conveyancing requires complete probity and propriety from the solicitors involved in what are, for most people, very significant financial transactions. The public would rightly expect appropriate care to be exercised by solicitors in such transactions and that only proper payments would be made. The Tribunal considered [Mr Ete's] failures to follow up on the red flags summarised above to be improper. He did not react during the life of the transactions as the red flags emerged. He did not do enough to question, and confirm in writing, the instructions to make payments to unrelated third parties which on their face, and even more so in this context, should have aroused suspicion. When the representatives of the intended buyers raised questions over the identities of the First Respondent's clients, he should have done more to investigate and assist them."*

63. In relation to Principle 2, integrity, the SDT found that Mr Ete's conduct:

> *"..was cavalier with regards to safeguarding client funds and acting on potential red flags"* (emphasis added)

64. It referred to **Wingate & Evans v Malins** (supra) and reminded itself that solicitors are not required to be paragons of virtue but added that:

> *"..his conscious carelessness and failure to respond appropriately with further enquiries, following what were concerning questions as to the identity of his clients, and the making of improper payments to unrelated third parties in those circumstances, amounted to a failure to meet the minimum ethical standards of the profession."* (emphasis added)

65. It is plain from these passages that the SDT did not accept that this was a case of a solicitor with limited experience in conveyancing doing his conscientious best, but falling short of the required standard.

The issues and the SDT's findings in relation to Allegation 1.2

66. The issue under this heading was whether Mr Ete *"caused, allowed, or acted in transactions which bore the hallmarks of fraud in breach of Principles 2, 6 and 10"*.

67. The factual basis for this allegation was essentially the same as for Allegation 1.1 and Mr Ete's response to it was essentially the same, although the SDT noted additional arguments which he put forward. For example, in relation to the fact that the passport described MT as male whereas all of the other information about her suggested that she was female, Mr Ete had said that he did not make assumptions about gender reassignment. Unsurprisingly, given that the issue was whether Mr Ete should have been alerted to the need to investigate the matter, the SDT found this explanation for

his inaction *"unpersuasive"*. He had also said that he feared being sued by his clients if he did not comply with their instructions, or being criticised by the SRA. The SDT found this evidence *"implausible"*. It said that it did not accept that he could ever have reasonably entertained such concerns. Again, these were obviously findings about Mr Ete's credibility.

68. The SDT found that the transactions did bear the hallmarks of fraud and that, for the reasons which it identified in relation to Allegation 1.1, Principles 2, 6 and 10 had been breached. In relation to Principle 2 it referred again to **Wingate** and said:

> *"any solicitor when presented with such hallmarks of fraud would take steps to protect the money involved and investigate the issues which had arisen"*

The issues and the SDT's findings in relation to Allegation 1.3

69. The issue under this heading was whether payments from the Firm's client account totalling £1,236,335.64 were supported by legitimate transactions. The basis for the figure was:

i) the improper payments relating to Prestwold Road and Morley Crescent, which totalled £448,499 including the fees paid to the Firm;

ii) further payments made between 31 October 2018 and the SRA's intervention on 8 January 2019 in the sum of £787, 836.64 which related to three further property sales (there was a fourth one but the deposit monies had been repaid) in which Person A had also been involved and there had been similar fraudulent activity.

70. Under Rule 7.1 of the SARs there is also a duty to remedy any breach promptly upon it being discovered, and it was alleged that Mr Ete had failed to do this.

71. Mr Ete denied these allegations. His position in relation to the payments relating to Prestwold Road and Morley Crescent was that they were properly made for the reasons summarised above. He took issue with the figures put forward by the SRA and he said that he had acted in good faith and in accordance with his instructions and the Rules at all times. There were no breaches to be remedied but, in any event, he was not able to do so once the SRA intervened.

72. The SDT adopted its findings on Allegations 1.1 and 1.2 and found Allegation 1.3 to be established to this extent. As far as the additional payments were concerned, it found that Mr Ete had made the relevant payments, but had done so based on the documents with which he was provided by Person A, who also features in allegations 1.5 and 1.6. The SDT said that it had some sympathy with Mr Ete's position but that he had allowed payments to be made based on documents provided to him which he had not scrutinised sufficiently:

> *"Having been referred to the relevant Land Registry office copy entries, showing ownership of the relevant properties, it appeared to the Tribunal to be more likely than not that these documents had been doctored. The documents were immediately implausible and unconvincing on their face."*

73. The SDT found that the issues with one of these further transactions came to the attention of the SRA when a report was made by law firms acting for purchasers who had paid for but had not received title to the property because the purported seller (the client of Pride Solicitors) was not the genuine owner. The two further properties in respect of which allegedly improper payments were identified were highlighted by Ms Maskell during her investigation.

74. The SDT decided not to make findings on the precise size of the client account shortage– e.g. to determine issues as to whether the fees paid to the Firm should be included in the figure - given that it was *"inevitably very substantial and amounted to several hundred thousand pounds"*. The Tribunal took the view that, on this basis, there was clearly a breach of Principle 10.

75. The SDT also found that there was a breach of Rule 7.1 in relation to the Prestwold Road and Morley Crescent payments given that they had been made in May and June 2018 and there had therefore been time to remedy the shortfall before the SRA's intervention in January 2019. It accepted, however, that there was nothing that Mr Ete could do once the SRA intervened and upheld this aspect of his case in relation to the additional payments.

76. There was therefore a breach of Principle 6. Given that *"Client money is sacrosanct in a solicitors practice"* the making of improper payments and failure to remedy an account shortage promptly would undermine public confidence in the profession. Following on from its findings on Allegations 1.1 and 1.2 and in relation to the additional payments, the SDT found that there had also been a breach of Principle 2. The obligation on all solicitors to be vigilant in protecting client money was said to be *"fundamental to the basic ethical requirements of the profession"* and the failure to prevent such a sizeable shortfall from developing amounted to a failure to act with integrity.

<u>The issues and the SDT's findings in relation to Allegation 1.4</u>

77. The issue under this heading was whether Mr Ete caused or allowed the client account of the Firm to be used as a banking facility. It arose because Rule 14.5 of the SARs provides:

> *"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."*

78. The SRA had also issued a Warning Notice which was clear as to the scope, operation and rationale for this rule, which is to reduce the risk of money laundering and the risk of issues arising in the context of insolvency.

79. In this connection, the SRA submitted that the client account had been used as a banking facility in relation to the payments to third parties in the Prestwold Road and Morley Crescent matters. There were no legal services attached to the flow of money from the Firm to the third parties. It was also argued that there was no adequate explanation recorded on the client file for the payments needing to be made directly to

third parties, rather than to the clients who could then pay the third parties. There was therefore an absence of proper instructions.

80. Mr Ete's case was that the payments were made on instructions. They were perfectly proper and they were made into bank accounts in the United Kingdom. The allegation was therefore unfounded.

81. The SDT found, correctly, that Mr Ete's arguments did not address the point of Allegation 1.4. It also found that the payments were not in relation to the underlying transactions and were not linked to a service forming part of the Firm's normal regulated activities. The payments were made at the request, and for the convenience, of the clients. There was therefore a breach of Rule 14.5. The SDT:

> *"considered the operation and protection of the client account to be the bedrock of legal practice. Even outwith issues with the client identities which were the focus of the previous allegations, the Tribunal considered that in such circumstances, it was clear that the money should be returned to the client for them to make any unrelated payment themselves."*

82. The Tribunal also considered that the proper administration of the client account went to the heart of the basis of public trust in the profession as well as engaging its essential ethical requirements. On this basis, the SDT it found that Principles 6 and 2 were also breached.

Mr Ete's arguments on appeal on Allegations 1.1 – 1.4

83. Grounds 1-4 in the Amended Grounds of Appeal and Skeleton Argument can be summarised as follows:

i) There was no breach of Rule 20.1 of the SARs, nor of any other duty by Mr Ete as he believed that those who gave him instructions were genuine clients of the Firm. He had no cause to question the identities of his clients, having carried out adequate checks. Nor did he have reason to question his instructions or to carry out due diligence in relation to his clients. They had told him that the money was paid to invest in the third party companies, so checks at Companies House would not have revealed any connection at the relevant time. Nor would any reasonable solicitor have made further inquiries in the circumstances and nor was he obliged to (Ground 1).

ii) The SDT was wrong to accept that the transactions had the hallmarks of fraud. As regards the point that there was no middle name on MT's passport, whereas there was one on other formal documents, no evidence was called that middle names are required to be recorded in passports. Nor was any evidence adduced that the results of the AML checks carried out by Mr Ete were in any way abnormal. They were not mandatory and, in any event, the clients passed. The fact that Mr Ete had sent a draft contract and other documents to ST Solicitors before he had any evidence of the identity of MT did not add anything as he did so in accordance with his instructions. There was also evidence before the SDT that ST Solicitors had not seen their client at this point, and that this sort of approach was normal (Ground 2).

iii) Allegation 1.3 is bad for duplicity in that it overlaps with Allegations 1.1 and 1.4. Insofar as it relates to fraudulent transactions carried out by Person A, Mr Ete was duped by them and ought not to be criticised for this (Ground 3).

iv) Allegation 1.4 is also bad for duplicity and shows the SRA *"throwing the kitchen sink"* at Mr Ete. He acted in good faith and with integrity at all times and had no reason to doubt the legitimacy of the documents which were put before him by Person A (Ground 4).

84. It will be seen that these Grounds of Appeal therefore reiterated Mr Ete's broad case before the Tribunal, and emphasised particular arguments which he had put forward and which had been rejected.

Discussion and conclusion on Grounds 1-4

85. Mr Ete showed good judgment in not seeking to develop these Grounds in his supplementary skeleton argument or his oral submissions. The essential answer to all of these arguments is that, as I have shown, the Tribunal made detailed findings of primary fact on the evidence which it received over the course of an 8 day hearing. It made these findings having analysed the documentary evidence and having seen the witnesses, including Mr Ete and Ms Maskell, be cross examined. It also had the benefit of seeing the whole of the evidence rather than snapshots from it, as I have, and hearing all of the arguments rather than some of them. It was much better placed than I am to assess the credibility of Mr Ete's evidence this context. He has not begun to show that there was any finding of primary fact which was "wrong" in the relevant sense, let alone a material one.

86. The Tribunal then carried out an evaluation of the primary facts as it had found them, and reached conclusions as to matters which included integrity and public confidence in the solicitors' profession. Again, it did so with the advantages which I have identified in the previous paragraph. In addition to this, many, if not all, of its secondary findings and conclusions involved judgments as to the standards required of a solicitor in the circumstances which it found to have arisen. These were quintessentially matters for a specialist tribunal, particularly given that the issues were as to the standards applicable in the context of conveyancing work and the governance of a solicitors' practice. As I have noted, the law requires the appellate court to accord a degree of deference to the decision of the specialist body in relation to issues of this nature. But, in any event, I can see no basis for questioning the judgment of the Tribunal on the issues in the present case.

87. As to the allegation that certain Allegations were duplicitous, I agree that Allegations 1.1 to 1.4 covered the same two transactions, although Allegation 1.3 concerned additional transactions. But that did not make them bad for duplicity: quite the opposite, given that this issue arises where more than one offence is alleged in a single count on an indictment. The same facts gave rise to various breaches of duty, which might have been pleaded as fewer Allegations, but this was a matter of drafting approach rather than substance. Moreover, the SDT did not determine sanction by adding up the number of Allegations which had been upheld. It addressed the substance of the matter, as I show below. There is therefore nothing in this point.

88. I therefore dismiss Grounds 1-4.

Allegations 1.5-1.6/Grounds 5-6

The issues and the SDT's findings on Allegation 1.5

89. The issue under this heading was whether Mr Ete had exercised sufficient supervision over Person A who had been introduced to Mr him by the previous owner of Pride Solicitors in early October 2018. This issue arose because, as noted above in relation to Allegation 1.3, Person A had then been involved in four improper transactions. They had acted for the seller in each case and the purchase monies were paid into the client account of the Firm. In the three matters where the monies were not repaid, the purchase monies were paid away to third parties and not used to redeem charges on the properties in question. As noted above, the total sum involved was in the order of £780,000. It had also transpired in the course of the investigation that the Person A had stolen the identity of a genuine solicitor who worked as in-house lawyer for a bank, and had forged a practising certificate to support his fictitious identity.

90. Under Outcome 7.8 of the SRA Code of Conduct 2011, as Principal Mr Ete was required to:

> *"have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people".*

91. Principle 8 of the SRA Principles 2011 requires that:

> *"You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles".*

92. Mr Ete's evidence was that Person A was introduced to him as a qualified solicitor who had been on the Roll since 2006 and had over 5 years' experience in conveyancing. He saw Person A's name on the Roll and had no reason to doubt their credentials. As an interim measure following the acquisition of Pride Solicitors he agreed that Pride Solicitors matters would be completed by the Firm. Person A therefore brought the files to him for completion. Mr Ete also said that he checked the paperwork with which he was presented by Person A and had no concerns. He said that the requests for payment were also fully documented. He was a victim of Person A, as he had been duped.

93. The SDT found that Mr Ete could not remember where Person A had worked before. He had been provided with a CV and given details of two referees but said he did not have time to contact or investigate either of them. He said that he did not hold Person A's bank account details although he was paid 50% of the fees on the matters which he handled. The Tribunal found that:

> *"He had been introduced to Person A and had seen his name on the Law Society's website but this was the extent of the information he had. Conveyancing transactions inevitably involve the transfers of large sums of money. In such a context, the need for a system of control and supervision was heightened. [Mr Ete] had not taken any steps to check the experience or competence of Person A. For someone who had the authority to run conveyancing files with autonomy, subject only to a perfunctory check by [Mr Ete] when payment was sought, the*

system of control and supervision for Person A was completely inadequate." (emphasis added)

94. The SDT recognised that Mr Ete took some steps to verify the work that Person A had completed on the conveyancing matters. But it added:

"However, by [his] own evidence, conveyancing was not his usual area of practice. The Tribunal considered that a perfunctory glance at the paperwork at the stage when Person A requested that payments be made was inadequate. [Mr Ete] had acknowledged that he did not exercise more extensive supervision or assume any greater involvement in the transaction." (emphasis added)

95. Outcome 7.8 and Principle 8 had therefore been breached. As far as Principle 6 is concerned, the SDT found that:

"..the failure to carry out meaningful checks on Person A's work and experience amounted to manifest incompetence ..displaying such manifest incompetence in the running of his firms in the context of an individual given a free rein to conduct legal work in which significant sums of client and purchaser money was inevitably involved, amounted to a failure to behave in a way that maintained the trust the public places in the [solicitor] and the provision of legal services." (emphasis added)

96. In relation to Principle 2 the SDT:

*"found the lack of supervision to be extraordinary. By reference to the test set out in **Wingate**, and the foreseeable potential consequences for those whose money was involved, the Tribunal found the failures…to be so profound as to amount to a failure to adhere to the basic minimum ethical standards of the profession. [Mr Ete] had failed to meet his basic responsibilities as Principal of both firms to such an extent that his conduct lacked integrity."* (underlining added)

The issues and the SDT's findings on Allegation 1.6

97. The issue under this heading was whether Mr Ete had taken any or any adequate steps to verify the identity and regulatory status of the individual using the name of Person A before allowing them to practise as a solicitor. Mr Ete's case was that he had no reason to doubt the bona fides and credentials of Person A as he had been introduced by the former owner of Pride Solicitors, his name was on the Roll and he had his CV and practising certificate. Mr Ete was entirely confident about the matter, to the extent that he was intending to appoint Person A as a compliance officer of Pride Solicitors. There was no reason to carry out further inquiries.

98. The judgment of the SDT, in the context of the case as a whole, was that this was a continuation of Mr Ete's *"lax approach to recognising and investigating when there were grounds for concern"*. The steps which Mr Ete had taken were not sufficient to discharge his regulatory duties given his own lack of experience in conveyancing and the degree of autonomy with which Person A would be working. *"The fact that the practising certificate in Person A's name with which [Mr Ete] was presented looked so obviously amateurish and was not for the then current year supported this conclusion."*

99. There was therefore a breach of Principle 8. The failure to carry out adequate checks was also manifest incompetence and a breach of Principle 6.

Mr Ete's arguments on appeal on Allegations 1.5 – 1.6

100. The Amended Grounds of Appeal and Skeleton Argument reiterates that Mr Ete had no idea that he had been deceived by Person A. This is said to be supported by the fact that he reported the matter to the police when it was discovered, and resigned from Pride Solicitors (Ground 5). He checked the Roll and, having been introduced to Person A by the former owner of Pride Solicitors, he was content that Person A was a bona fide solicitor. He did not carry out any further checks as he was busy with the merger of the two firms. The checks which he carried out were adequate (Ground 6).

101. Again, it will be noted that this is a reiteration of his broad case before the Tribunal.

Discussion and conclusion on Grounds 5 and 6

102. Again, Mr Ete was wise not to seek to develop these arguments in his supplemental argument and his oral submission. They do not begin to address the totality of the findings against him in relation to Allegations 1.5 and 1.6. Those findings were findings of fact made by a specialist tribunal as to the standards required of a solicitor in the circumstances which it found to have arisen. The points which I have made above at [85] and [86] are equally applicable here and I need not repeat them.

103. I therefore dismiss Grounds 5 and 6.

Allegation 1.7/Ground 7

104. The issue under this heading was whether Mr Ete had misled his insurers in correspondence dated 10 July 2018, in breach of Principles 2, 6 and 8 and/or dishonestly. It arose because, against the background of the questions, challenges and threats from ST Solicitors in relation to the Morley Crescent matter on 3 and 4 July 2018 which I have summarised at [49]-[52], above, Mr Ete submitted a professional indemnity renewal form. Section 9 of this form required confirmation that Mr Ete had *"made due and careful enquiry"* and that he was *"not aware of any claims"* or *"circumstances likely to give rise to claims, in the last 6 years"*. He gave this confirmation despite what had happened a week or less earlier, and despite the fact that he had taken urgent and unsuccessful steps to cause the bank to recall the purchase monies. He did not notify the insurer of these issues until 23 November 2018.

105. The Tribunal noted that Mr Ete's case was that:

i) He genuinely believed that he was not obliged to notify the insurer of any issues in relation to the Morley Crescent matter when he signed the form on 10 July 2018. No letter before action had been received and solicitors routinely make threats. Things had not got to the point where it was necessary or appropriate to report the matter. When he considered that that stage had been reached he did so.

ii) Mr Metzger also pointed out that Mr Ete was simply renewing his cover with the Firm's insurer of many years and that *"professional indemnity insurance*

covers the practice against negligence and did not cover the Firm against an investigation by the [SRA] or the Police".

iii) No evidence had been adduced from the insurer to suggest that they believed that they had been misled and the fact that they had subsequently contested the litigation when a claim was brought against the Firm showed that they did not consider that they had been. They had not withdrawn cover either.

106. The SDT rejected Mr Ete's evidence that he thought that there was nothing in the threats made by ST Solicitors:

> *"The emails stated plainly that the transaction may be fraudulent, that the intended purchaser had lost £350,000 and had not received good title. [Mr Ete] was told bluntly that his client identification measures were considered inadequate. On the day of this communication [Mr Ete] tried three times to recall the payment to the third party… The Tribunal considered that this indicated that the [Mr Ete] was well aware that there were grounds for concern"* (emphasis added)

107. The Tribunal accepted that Mr Ete may genuinely have believed that there was no scope for any claim against him or the Firm to be successful. But it found that in the light of the words of the renewal form it was *"inconceivable"* that he was not aware that he was obliged to declare the position to his insurer on the basis that a claim was likely to arise. His evidence on this point was described by the Tribunal as unconvincing and lacking in credibility. The finding was that he was aware that he should have reported these issues but *"elected"* not to.

108. On the basis of these findings the SDT went on to find that this was *"a clear case where integrity and the standards of the profession required scrupulous accuracy"* given that the insurer would rely on the information provided on the form to make decisions as to the cover offered. The deliberate failure to declare the information was therefore a breach of Principles 2, 6 and 8.

109. The SDT then dealt with dishonesty as a separate issue. Having set out the test in **Ivey** in full earlier in its Judgment, it then reminded itself that the first stage of the test was to establish the actual state of Mr Ete's beliefs and that his beliefs did not have to be reasonable as long as they were genuinely held. Its finding was as follows:

> *"As to the state of [Mr Ete's] knowledge, the Tribunal had found that [he] was well aware that he should have reported these issues to his insurer but that he elected not to do so. He may have believed that no successful claim would result, but he was aware that there was a major issue with the relevant transaction; that the purchaser's solicitor considered the transaction to be fraudulent and considered the client identification steps taken by [him] to have been inadequate. … Once the above findings as to his knowledge and belief as to the facts had been made, the Tribunal found on the balance of probabilities that ordinary decent people would regard [Mr Ete's] conduct as dishonest. He had completed the form untruthfully. The aggravating allegation of dishonesty was accordingly proved to the requisite standard."*

Mr Ete's arguments on appeal in relation to Allegation 1.7

110. The Amended Ground of Appeal and Skeleton Argument argues, under Ground 7, that the finding of dishonesty was *"unduly harsh"*. The SDT did not properly apply the **Ivey** test in that Mr Ete believed that because fraud *("fraud or other criminal conduct"*) was not covered by the Firm's professional indemnity insurance, there was no need to disclose the threats which had been made by ST Solicitors given that they related to fraud and reporting the matter to the police. There was no dispute that these matters were not covered by the insurance policy. The SRA failed to prove its case on the evidence. Mr Ete acted in good faith and there was no evidence from the insurers that they considered that they had been misled.

111. The arguments were then amplified in the supplementary skeleton argument, as I have said. The argument made was that although the Tribunal cited **Ivey** *"They substituted their thinking to what they felt I should have done"* and ignored Mr Ete's explanation for why he did not believe that it was necessary to declare the matter. He believed that the threats by ST Solicitors were empty and that his insurance did not cover fraud or matters reported to the police in any event. Mr Ete argued that the Tribunal's view was akin to requiring him to declare a flood in the home when applying for car insurance. The threats by the ST Solicitors had no relevance to his professional indemnity insurance.

112. Mr Ete reiterated these arguments in his oral submissions. In relation to his contention that the Tribunal ignored his evidence of his beliefs as to the scope of his professional indemnity insurance, I queried whether it had been argued that a civil claim in fraud was not covered given that, as noted above, the Tribunal noted the submission on his behalf as being that: *"professional indemnity insurance covers the practice against negligence and did not cover the Firm against an investigation by the [SRA] or the Police"*. The transcript of the closing submissions, which I asked to be sent to me, confirms that this is accurate. I also asked whether the contract of insurance had been part of the evidence before the Tribunal and was told that it had not been. What had been in the Bundle was a Schedule to the contact, which I was shown, and which set out terms as to duration and cost but did not set out the terms as to the nature of the claims covered.

Discussion and conclusions on Ground 7

113. As I have noted, the Tribunal directed itself carefully and correctly as to the **Ivey** test. It was particularly clear that the first limb of the test simply concerns the subjective knowledge and beliefs of the person in question. It considered Mr Ete's evidence and arguments in relation to that issue and clearly rejected them as lacking in credibility. Its finding was that Mr Ete was aware that he should declare the matter and that he elected not to do so. As will be seen below, it considered that his motivation for doing so was to secure the insurance and to give himself time to attempt to resolve the issues which had arisen. These findings were based on the SDT's assessment of the whole of the evidence: see [85] above. It saw and heard Mr Ete give evidence and be cross examined, and there is in my judgment no basis on which I am able to hold that its findings were wrong.

114. As to the argument that there was no evidence from the insurers that they considered that they had been misled, this and other arguments put forward by Mr Metzger were specifically taken into account by the Tribunal, as I have pointed out at [105(i)-(iii)] above. This was a relevant part of the evidence which the Tribunal was right to take

into account but it was not decisive, as the issue turned on Mr Ete's knowledge and beliefs, rather than the insurer's reaction to his failure to declare the matter.

115. As for the argument about the scope of the Firm's insurance, I have real doubts that it was part of the evidence that the policy did not cover civil claims against the Firm in fraud as opposed to the argument being that it did not cover criminal or SRA proceedings. If the point had been important to Mr Ete's case, the contract of insurance would surely have been put before the Tribunal. To the extent that the point was argued, I am confident that it was taken into account, but the point was a bad one in any event. It was clear that a claim of some sort was in the offing when Mr Ete signed the renewal form and, indeed, one was subsequently made albeit Mr Ete told me that it had recently been settled on a "drop hands" basis. The claim would not necessarily be limited to a claim in fraud given that the chief complaint was that he had not taken adequate steps to verify the identity of his client and/or had not carried out sufficient due diligence, whereas the transaction had proceeded on the basis that he had. The Tribunal was entitled to take the view that this aspect of Mr Ete's explanation for his actions was unconvincing.

116. In any event, the obligation was to disclose *"circumstances likely to give rise to claims"* without limitation as to the type of claim and regardless of whether Mr Ete considered that any claim would be successful. The Tribunal was prepared to accept that Mr Ete believed that any claim would be unsuccessful, but not that he did not believe that he had an obligation to report the situation. It would have been entitled to reach this finding even if Mr Ete did think that there was no cover for civil claims in fraud as this would not be decisive of the issue as to why he acted as he did.

117. I therefore dismiss Ground 7.

Allegation 1.8/Ground 8

118. The issue under this heading was whether Mr Ete had appointed a compliance officer for legal practice (COLP) and for finance and administration (COFA) at Pride Solicitors in 2018. It arose because this is a requirement of Rule 8.5 of the SRA Authorisation Rules 2011 and the SRA's case was that no such officers were in place in the last quarter of 2018, although it accepted that some steps towards appointing one had been taken by Mr Ete.

119. Mr Ete's case was that he had made the necessary arrangements for NM to be appointed. They had duly applied but the SRA had not responded to the application. He had then arranged with Person A to fulfil these roles and had instructed them to contact the SRA to make the necessary arrangements. He had therefore done all that he could to effect the appointments and it was insufficient for the SRA to assert, after the event, that he should have done more. Nor was there any evidence that no appointments had been made and, in any event, any liability was that of Pride Solicitors rather than his liability.

120. The SRA pointed out that Rules 8.5(b) and (d) make clear that the designated person has to be approved by the SRA and held that until such approval had been given any appointment did not take effect. It agreed that the fact that Mr Ete had taken steps towards such appointments was relevant to mitigation but said that it was not an answer to the allegation of breach. It went on to find that the roles of COLP and

COFA were important elements of the regulatory framework for the protection of the public, and that Mr Ete had breached Principles 7 and 8.

Mr Ete's arguments on appeal on Allegation 1.8

121. Ground 8 of the Amended Grounds and Skeleton Argument asserts that Mr Ete did appoint NM, and then Person A, to fulfil the relevant roles. No evidence was called to assist the SDT as to the procedure or requirements in relation to the appointment of COLPs and COFAs.

Discussion and conclusion on Ground 8

122. This is another point which, rightly, was not developed by Mr Ete. The SDT's finding that the appointments had not been made was based on the fact that there had been no approval of such appointments by the SRA, as Rule 8.5 required. In any event, its findings were findings of fact with which there is no basis for me to interfere.

123. Ground 8 is therefore dismissed.

Sanction/Ground 9

124. The Tribunal noted Mr Metzger's recognition that the normal sanction where a finding of dishonesty is made is to strike the solicitor off, and his submission that there were exceptional circumstances in this case which made that course unnecessary and inappropriate. Mr Metzger said that Mr Ete had health related caring responsibilities for his son which exacerbated the stress and depression which Mr Ete had been experiencing at the relevant time. He pointed out that there were no previous regulatory findings against Mr Ete in 20 years of practice, that conveyancing work was only 1% of the Firm's work and that the bulk of the case against Mr Ete was based on fraud having been practised upon him. The duration of the misconduct had been short and there had been no personal benefit to Mr Ete. Mr Ete had also taken steps to recover the monies paid away to third parties, albeit unsuccessfully, and had arranged for the repayment of deposit monies to the buyer in one of the cases.

125. The SDT referred itself to is Guidance Note on Sanctions (8th Edition) as well as the decisions in **Bolton**, **Sharma** and **James** referred to above. The Tribunal assessed Mr Ete's culpability as high:

> *"…the Tribunal found [Mr Ete's] conduct in respect of which dishonesty had been found was to improve the Firm's position particularly by securing continued indemnity insurance cover and to give himself time to resolve the issues which had arisen on the conveyancing matters. More broadly, at the time [Mr Ete] was seeking to expand the practice into new areas of work. The Tribunal did not consider that [Mr Ete] had intended for the compliance measures and systems to be inadequate, but that he had not made any meaningful nor adequate efforts to ensure that they were fit for purpose. His conduct was not motivated primarily by any personal financial gain. The misconduct could not be described as spontaneous as there were multiple findings and the conduct extended over three months in 2018. He was an unwitting player in the apparent fraud but the compliance systems that he had established proved wholly inadequate. [Me Ete] had a*

> *high degree of control over the circumstances of the misconduct despite being taken in himself by those who perpetrated the fraud. He had conduct of two of the conveyancing matters and was the Principal of both firms. He had sole control of the Firm's bank accounts. The First Respondent was a highly experienced solicitor with over twenty years' experience, albeit his experience of conveyancing was limited."*

126. As far as harm was concerned, the Tribunal found that:

> *"There had been a direct and significant impact on those whose identities [Mr Ete's] purported clients had impersonated and used. In one case witness evidence had been provided from the owner of the relevant property that efforts had been made by the purchaser to have her son evicted from her property. The buyers had lost money when the purchase monies had been paid away. The person whose identity Person A had used had been personally and professionally inconvenienced. Whilst [Mr Ete] had not been the instigator of these frauds it was his compliance failures which had allowed this harm to materialise. The reputational harm to the profession of a solicitor acting dishonestly when obtaining indemnity insurance, making improper payments and acting in transactions with the hallmarks of fraud was very serious and something which should have been obvious to [Mr Ete]."*

127. The Tribunal found that the matter was aggravated by the finding of dishonesty, by the fact that there were multiple failures over a period of time and the failures were systemic, and by the fact that Mr Ete had blamed others for many of the issues. In some cases others were indeed to blame, but Mr Ete had not taken responsibility for matters which were within his control. The Tribunal noted the mitigating features of the case but found that Mr Ete had not *"demonstrated any insight into the gravity of the allegations or the shortcomings of his actions"*.

128. In relation to **Sharma** and the question of exceptional circumstances, the Tribunal directed itself correctly as to the relevant considerations, in accordance with the passage from the judgment of Coulson J cited at [29] above. It was not persuaded that this was an exceptional circumstances case for reasons which it explained as follows:

> *"The nature of the dishonesty involved misleading his insurer as part of a renewal process. It was a single episode of limited duration, in that it was one misleading answer on one form. However, it could not be described as a "moment of madness" as the completion and submission of such a form was not a one-off instantaneous action but an action with several constituent parts. Whilst there was no direct financial benefit to [Mr Ete], there was some benefit to him and his firm in that it eased the process of renewal of the relevant insurance cover. Such insurance was for the benefit of a firm's clients and the provision of misleading information in a process which required the utmost good faith created the risk that the cover would be vitiated. The multiple findings of conduct lacking integrity showed a pattern of behaviour in which compliance systems received a significant and repeated lack of attention."*

129. The Tribunal found that:

> *"The factors raised in mitigation, and the pressures on [Mr Ete], may well have been significant but they were not exceptional and did not relate to the dishonesty found proved..... pressure, stress and depression (even if evidenced which was not the case here) cannot justify dishonesty by a solicitor."* (emphasis added)

130. The Tribunal therefore concluded that the seriousness of the conduct which it had found to be proved, and the reputation of the profession, required that Mr Ete be struck off.

Mr Ete's arguments on appeal in relation to sanction

131. The Amended Grounds of Appeal and Skeleton Argument argue that striking Mr Ete off offended against the rule against double jeopardy. This appears to be a reference to an argument that striking off was *"brutal and harsh"* as Mr Ete had already been suspended since 8 January 2019 and had therefore been punished sufficiently. Comparisons with three reports of first instance decisions in other cases, covered in the Law Society Gazette, were also made with a view to arguing that more serious cases had not resulted in striking off.

132. Mr Ete's supplemental skeleton argument and oral submissions argued the SDT did not properly follow the Guidance Note on Sanctions. He also referred to the judgment of Martin Spencer J in **Mark Lorrell v Solicitors Regulation Authority** [2019] EWHC 981 (Admin) at [35] where the Judge noted a submission that striking off is the most draconian sanction available to the SDT and is reserved for the most serious misconduct. The findings necessary to support such a sanction must therefore be made if it is to be imposed.

133. Mr Ete then cited relevant passages from the Guidance Note on Sanction including passages on "Culpability" and "Harm" and made submissions which disagreed with the SDT's findings on these issues. He argued that there was no evidence to support the SDT's findings as to the reasons for his actions and he was an innocent victim of fraud. He reiterated the point that only 1% of the work was conveyancing and argued that his level of experience was not explored in evidence. As to harm, ultimately the claim brought in relation to the Morley Crescent matter had been settled on a "drop hands" basis. He also reiterated his arguments as to why he had not behaved dishonestly and the mitigating features of the case including that he had no previous disciplinary record and had already served a suspension of more than two years.

Discussion and conclusion on Ground 9

134. As I have noted, the SDT referred to the Guidance Note on Sanction and to the relevant authorities in coming to its decision on sanction. It is also quite apparent that it followed the relevant guidance in coming to its decision. It also weighed all of the relevant considerations carefully based on its findings of fact. Those findings were based on its assessment of the evidence as a whole and there is no basis on which I could go behind them. Moreover, as I have highlighted by reference to the **Salsbury** case at [23], above, judgments as to the degree of seriousness of a solicitor's professional failings, and as to the appropriate sanction in a given case, are very much within the sphere of expertise of the specialist regulatory body. The court will therefore be reluctant to interfere. Whilst I may have a degree of sympathy for Mr Ete

on the basis of my dealings with him, I cannot go behind the SDT's findings and views on these issues or see any basis for holding that they were wrong.

135. Mr Ete did not pursue his comparisons with other cases, no doubt because he appreciated that each case turns on its particular facts and the judgments of the Tribunal which considers it. As far as the argument based on the fact that Mr Ete had served a 2.5 year suspension and this was punishment enough is concerned, again this was a matter for the SDT to judge. But I have noted that, as stated in **Sharma**, if there is a finding of dishonesty there will only exceptionally be a sanction short of striking off, for the reasons explained in the **Bolton** case. Moreover, as was stated in **James** and, indeed, is stated in the Guidance Note on Sanction, once a finding of dishonesty is made, stress or even depression will not amount to exceptional circumstances in this context. This is a point which the SDT itself made whilst noting that there was no independent evidence of this in the present case: see [129], above.

136. In Mr Ete's case there had also been findings of a lack of integrity and breach of the duty to maintain the public trust in relation the conveyancing of Prestwold Road and Morley Crescent, and in relation to the supervision of Person A. The shortfall on the client account which resulted was very substantial. There were multiple and systemic failings. The Tribunal also found Mr Ete to be lacking in credibility in the evidence which he gave and to be lacking in insight as to the seriousness of his failings. It might well have struck him off even absent the finding of dishonesty, but this finding made the sanction inevitable.

137. I therefore dismiss Ground 9.

Costs/Ground 10

138. The SRA submitted a statement of costs dated 1 March 2021 which was in the sum of £79,086.15. This statement had not been updated to take account of the additional 3 days of the hearing which there had been in June 2021. It was submitted that this figure was reasonable and proportionate.

139. The Tribunal took into account Mr Metzger's submission that Mr Ete had sought to protect his professional position and had not sought to obfuscate, as well as evidence as to his means. The solicitor's costs of £34,500 plus VAT were found by the Tribunal to be reasonable and proportionate having regard to the work involved in the case, but the forensic investigation and supervision costs were then reduced to £30,000 in total based on the complexity of the documents in the case and the Tribunal's experience of other cases, making a total sum of £71,400 which the Tribunal found was reasonably incurred by the SRA. The Tribunal then apportioned this sum between the two respondents and ordered Mr Ete to pay 90% of it reflecting the proportion of the work in the case which it attributed to his part of it. It did not consider that it was appropriate to reduce the figures based on the means of the respondents.

140. The appeal is on the basis that:

i) the figure which the SDT ordered Mr Ete to pay was disproportionately and unreasonably high having regard to the amount of work involved in the case; and

ii) the Tribunal failed to carry out a line by line analysis of the SRA's statement of costs as, it is said, is required or at least recommended by the decision of the Court of Appeal in **West v Stockport NHS Foundation** [2019] EWCA Civ 1220 at [88]-[91].

141. I reject both arguments.

i) The questions of reasonableness and proportionality were a matter for the SDT which has a wide discretion as to what orders it makes in respect of costs. It was in a far better position than I am to assess the costs and I see nothing surprising about the conclusions which it reached.

ii) As for the complaint based on **West**, I understand that Mr Metzger did not ask for a line by line assessment to be carried out but addressed the matter in a way which invited a "broad brush" approach. The SDT adopted an approach which was consistent with this. The result was a reduction in the figure claimed which, itself, did not include the costs of 3 days of the hearing. As I have said, the final figure was unsurprising. If Mr Metzger had asked for a more scientific approach or a detailed assessment, as he could have, the SRA might have asked for the full amount of its costs to be considered or assessed. In my view the SDT was entitled to look at matters in the round, as it did, and this was a permissible exercise of its discretion.

142. Ground 10 is therefore dismissed.

Conclusion

143. For all of these reasons the appeal is dismissed.