The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 7 May 2014 in respect of findings. The appeal was heard by Mr Justice Holman on 18 February 2015, and dismissed with costs. Bains v Solicitors Regulation Authority [2015] EWHC 506 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10775-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RANBIR SINGH BAINS Respondent

Before:

Mr D. Glass (in the chair)
Mr S. Tinkler
Mr S. Hill

Date of Hearing: 19 & 20 March 2014

Appearances

Mr Jonathan Goodwin, solicitor advocate, of Jonathan Goodwin Solicitor Advocate Ltd, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

The Respondent, Mr Ranbir Singh Bains, was present and represented himself.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Ranbir Singh Bains, in a Rule 5 Statement dated 8 July 2011 were:

1.1 That he withdrew monies from client account in respect of four clients that exceeded the funds held for those clients, in breach of Rule 22(5) Solicitors Account Rules 1998 ("SAR"), giving rise a shortage on client account;

1.2 That he improperly utilised client monies for the purposes of other clients in breach of Rule 30 of SAR;

1.3 That he permitted his client bank account to be utilised by clients and/or third parties to receive and pay out monies where there were no underlying legal transactions in breach of Rule 15(2) and Note (ix) to Rule 15 SAR;

It was further alleged that the Respondent behaved dishonestly in respect of allegations 1.1 and 1.2 or that he was grossly reckless in his stewardship of client funds.

2. The further allegation made against the Respondent in a Rule 7 Statement dated 21 December 2012 was that:

2.1 Contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he made representations in emails in relation to property transactions that were inaccurate, misleading and untrue. It was further alleged that the Respondent was dishonest in sending emails containing information about the property transactions that he knew to be untrue, but dishonesty was not an essential ingredient of the allegation.

Documents

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

Applicant:-

- Application dated 8 July 2011
- Rule 5 Statement, with exhibit "IPR/1", dated 8 July 2011
- Rule 7 Statement, with exhibit "JRG1", dated 21 December 2012
- Transcript of interview 14 January 2011
- Schedule of costs

Respondent:-

- Witness statement, with exhibits (48 pages), dated 28 February 2014
- Second witness statement, with exhibits, dated 18 March 2014
- Report of Dr Rozewicz, 9 March 2014 (incorrectly dated 9 April 2014)
- Copy medication information, 12 March 2014
- Copy emails Respondent/Applicant 30 August, 22 and 23 September 2011
- Bundle of 39 testimonials

Preliminary Matter – progress of the hearing

4. The Tribunal noted that the Respondent was unrepresented and indicated that if he had any questions concerning the procedure he should ask the Tribunal. The Tribunal indicated that it was aware of his health difficulties and that the Respondent should ask for a break if he required a break at any point. It noted that the Respondent's health problems had contributed to previous adjournments of this case; it was not submitted that the Respondent was unwell so as to be unable to take part in these proceedings. The Tribunal Chair stated that the Tribunal was independent of the Applicant and the Law Society and its task was to adjudicate on the allegations which had been brought. The Tribunal informed the Respondent that he could make submissions and/or give evidence; if he gave evidence he could be cross-examined, but the force of his evidence could be diminished if he did not give evidence. The Tribunal confirmed that it would read and take into account the character evidence which had been submitted, as it was required to do before making findings where there was an allegation of dishonesty.

5. The case was opened by Mr Goodwin. He informed the Tribunal that he had available a transcript of an interview carried out during the investigation, as the Respondent had indicated that this was contentious; the Respondent had been provided with a copy of the recorded interview at an early stage in the proceedings. The Forensic Investigation Officer, Sarah Taylor, was called to give evidence at about 10.56am on 19 March; she had not been present when the case was opened. The Applicant's case was closed about 11.40am, after which the Respondent gave evidence until the end of the Tribunal's day (at about 4.50pm), with a one hour lunch break and one further break. The Respondent resumed giving evidence at about 10am on 20 March. An issue concerning the transcript of the interview of 14 January 2011 arose and the Tribunal adjourned at about 11am to allow the Respondent to review the transcript and related documents. On resuming at about 1pm after a lunch break, Ms Taylor was interposed and re-sworn to deal with issues arising from the transcript, and gave evidence until about 2pm. The Respondent resumed giving evidence until about 2.15pm. After a break until about 2.30pm, the Respondent made submissions. The Tribunal retired to consider its findings at about 3.05pm and delivered its outline findings to the parties at about 5.12pm. After hearing from the Respondent in mitigation, and hearing submissions on costs, the Tribunal considered sanction and costs and delivered its decision shortly before 6pm.

Factual Background

6. The Respondent was born in 1960 and was admitted as a solicitor in 1986. The Respondent had not held a current practising certificate since February 2011, when his certificate was suspended, but his name remained on the Roll of Solicitors.

7. At all material times the Respondent practised on his own account under the style of Bains and Co at 10 Station Road, Watford WD17 1EG ("the Firm").

8. A Forensic Investigation Officer ("FIO") of the Applicant commenced an inspection of the Firm on 11 January 2011 and produced a forensic investigation report dated 21 January 2011 ("the FI Report"). The matter was considered by an Adjudication

Panel of the Applicant on 4 February 2011, when a decision was made to intervene in the Firm and to refer the Respondent's conduct to the Tribunal.

9. The Applicant relied on the FI Report, which reported on a number of matters which were substantially accepted by the Respondent.

Forensic Investigation Report

10. The FI Report identified that the Firm's books of account were not in compliance with the SAR. As a result, the FIO was not able to calculate the total of the Firm's liabilities to clients for the purpose of making a comparison with client cash available, but identified a minimum cash shortage of £594,873.57 as at 31 December 2010. The FI Report stated that the minimum cash shortage was £595,703.99 but this was found to be incorrect in that the closing debit balance on the AT Ltd ledger (about which further detail is given below) was stated to be £77,762.64 when the true figure was £76,932.64.

11. The cash shortage was found to have arisen as a result of withdrawals made on behalf of four associated clients which were in excess of the funds held for those clients as follows:

11.1 AB Ltd £355,018.80

11.2 LIUK Ltd £150,000.00

11.3 AT Ltd £ 77,762.64

11.4 Mr RC £ 12,922.55

This gave the total stated in the report of £595,703.99, which figure was subsequently corrected in relation to the AT Ltd matter.

12. The accountant who prepared the Firm's accountants' report for the year 1 April 2009 to 31 March 2010 noted shortages on client account that had been caused by withdrawals on the AT Ltd and AB Ltd ledgers that exceeded the amounts held on behalf of those clients. The shortage was reduced to £512,373.57 by the time the proceedings were issued.

AT Ltd

13. AT was a company owned by Mr AM and Mrs PM, with Mr PM being a director of the company. The Respondent took on AT Ltd as a client during 2008. AT Ltd was a company which dealt in property investments and it had subsidiaries which ran amusement arcades and licensed betting offices, for which the Firm was also instructed to act.

14. The Respondent informed the FIO during the investigation that AT Ltd had a property portfolio of in excess of £250 million and that the business was valued at £100 million in 2007/8. The Respondent informed the FIO that during the banking crisis in 2009 AT Ltd was struggling to fulfil its commitments to the bank and the company started

to borrow money from private lenders at very high rates. The Respondent told the FIO that a company, JD Limited, which was his/his wife's company loaned AT Ltd £1 million at an interest rate of 2% per month. At the date of the FI Report, the Respondent had not produced any documents confirming the terms of the loan. AT Ltd was put into administration on 7 December 2009.

15. The FIO noted nine client to office account transfers between 5 February and 30 April 2009 totalling £144,000 which were described on the AT Ltd ledger as short term loans. Five of these transfers, totalling £64,000, were made whilst the ledger showed a debit balance. The Respondent told the FIO that the transfers represented interest payments (for JD Limited) on the loan, which payments had been authorised by AT Ltd.

16. On 6 August 2009 and 9 December 2009 transfers of £250,000 and £42,500 respectively from the client ledger of Mr D (deceased) to the AT client ledger; the second of these transfers was after AT Ltd's insolvency. The monies were transferred from a designated deposit account in Mr D's name to the Firm's general client account without any proper authorisation. £285,085.73 of the unauthorised loan was repaid by means of an inter-ledger transfer from the AB Ltd matter; a total of £7,414.27 remained outstanding at the time of the inspection. The FIO noted that the Firm had not transferred its costs of £7,626.25.

17. In a similar fashion on 16 October 2009 a transfer of £100,000 was made from the client ledger of Mr A (deceased) to the AT Ltd client ledger. The £100,000 was transferred back to the Mr A ledger on 5 November 2009. The AT Ltd ledger showed a debit balance prior to the transfers from the Mr D and Mr A ledgers.

18. The Respondent told the FIO that there was no connection between AT Ltd and the Mr A and Mr D matters and that the transfers were unauthorised loans which were made in order to balance the AT Ltd ledger. The FIO reported that the AT Ledger had a debit balance of £76,932.22 at 31 December 2010, which figure was subsequently adjusted to £77,762.64.

AB Ltd

19. The directors of AB Ltd were listed at the time of the inspection as Mr KP and Mr RC. The Respondent informed the FIO that Mr KP and Mr RC were closely linked to Mr AM, the director of AT Ltd.

20. The Firm's ledger for an AB Ltd matter commenced on 15 January 2010 with a debit balance of £25,000. The ledger was said to relate to a general file for work done for AB Ltd. The FIO reported that the file did not reflect any of the payments that were recorded on the client ledger as being made.

21. The FIO's review of the client matter ledger showed that the ledger mostly showed a debit balance. On 24 February 2010 an inter ledger transfer was made to the matter of Mr D (deceased) for £70,000, increasing the debit balance on the AB Ltd ledger to £518,823.80. As noted at paragraph 16 above, on 6 August and 9 December 2009 £250,000 and £42,500 respectively had been transferred from Mr D's designated deposit account to the general client account and then inter ledger transfers made to

the matter of AT Ltd in the same amounts. The Respondent told the FIO that there was no connection between Mr D and either AT Ltd or AB Ltd and that the money was an unauthorised loan.

22. On 15 March 2010 the debit balance on the AB Ltd matter ledger had been reduced to £1,777.55. On the same date, a second inter ledger transfer was made to the Mr D matter for £215,085.73, which increased the debit balance to £216,863.28. The Respondent told the FIO that this was in respect of an unauthorised loan which had been made to AT Ltd but which was being repaid by AB Ltd. As noted at paragraph 14 above, AT Ltd went into administration on 7 December 2009.

23. The FIO reported that as at 18 May 2010 there was a nil balance on the AB Ltd matter after a payment of £11,750 had been made to Clyde & Co LLP. On 21 May 2010 a client to office transfer took place for £10,000, which caused a debit balance of £10,000. The Respondent told the FIO that the transfer had been a mistake, as he thought the account was in credit by £11,750 when he instructed the book keeper to make the transfer.

24. The FIO reported that from 21 May 2010 until the inspection the client matter ledger had not been in credit. On 3 September 2010 the debit balance amounted to £430,000. After 22 November 2010 no more payments or receipts were charged or credited to the client matter ledger and a debit balance of £355,018.80 was in place at the time of the inspection.

25. The FI Report recorded that at a meeting on 14 January 2011 the FIO asked the Respondent why he had made payments from the client ledger when there were insufficient funds. There was some dispute about what had been said in the interview, and the context in which it was said – for which see the evidence noted below - but the FI Report recorded that the Respondent had said he had not looked at the ledger and that he thought the total owed was £400,000 on the four ledgers in question, not £595,703.99 and that he felt that if he kept paying out for his clients they would eventually repay him.

Mr RC

26. Mr RC was a director of AB Ltd and S L (UK) Ltd ("S Ltd"). A ledger for Mr RC was opened on 27 April 2010 and was in credit until 25 May 2010 when the account was credited with two receipts from GA Corp totalling £20,000 and debited with a payment to Mercedes Benz of £66,322.55 which caused a debit balance of £46,322.25.

27. The Respondent was asked by the FIO why he made the payment when he had insufficient funds. The explanation recorded in the FI Report was that the Respondent had been in his car and he had been told by Mr RC that he would be receiving the money, including £20,000 from GA. As he had received the GA money he took it on trust that he would receive the balance, and he had authorised the payment.

28. The client ledger showed receipts of £10,000 on each of 26, 27 and 28 May 2010 which reduced the debit balance to £16,322.55. On 28 May 2010 the ledger was

debited with an inter ledger transfer of £15,000 to AB Ltd and payment of £12,000 to J&J Services, increasing the debit balance to £43,322.55.

29. On 3 June 2010 Mr RC deposited £60,000 into the Firm's client bank account, which caused the ledger to show a credit balance of £16,677.45. On the same date a payment of £86,600 was sent to AS, causing the client matter ledger to be overdrawn by £69,922.55. The FI Report recorded that the Respondent told the FIO that he would have been told by Mr RC that £60,000 had been paid in and that the remaining £86,600 would be due. He sent out the money on trust in anticipation of receiving funds.

30. The FIO noted that payments continued to be made at times when the ledger showed a debit balance, including a payment to M 929 of £25,000 on 22 July 2010, causing a debit balance of £12,922.25 which still existed at the time of the inspection.

LIUK Ltd

31. Mr AM's brother-in-law, Mr GA, was a director of LIUK Ltd. A ledger was created for LIUK Ltd on 23 November 2010 with a payment by cheque into the Firm's client bank account totalling £200,375 from S Ltd. The Respondent told the FIO that he thought the money being lodged would have been a deposit/loan to acquire an interest in assets of AT Ltd. A payment of £200,000 was made to M 929 on 23 November 2010, before the cheque had cleared. M 929 and S Ltd were connected in that Mr TSC and Mr MG were directors of both companies; Mr RC was also a director of S Ltd.

32. The client bank statements showed that the cheques totalling £200,375 from S Ltd had been returned unpaid on 26 November 2010. A reversing entry was made on the client ledger on 1 December 2010 at which point there was a credit balance of £20,000. On 3 December 2010 a payment was made to OG Ltd for £200,000, causing a debit balance of £20,000.

33. The client ledger was credited with three payments of £10,000 each from GA on 7, 8 and 9 December 2010 and £20,000 from M 929 on 14 December 2010, which reduced the debit balance to £130,000 on 14 December 2010. The Respondent told the FIO that GA was an organisation which would change cash into telegraphic transfers in order to transfer money to where it was required. The Respondent told the FIO that a lot of the amusement arcades run by AB Ltd and others were near GA shops and so the staff would take the money to GA rather than to a bank.

34. On 15 December 2010 a payment of £20,000 was made to a firm of solicitors, JW LLP, which increased the debit balance to £150,000. This payment was said by the Respondent to be for legal services that JW LLP were providing for directors to gain a license from the Gambling Commission to operate betting shops.

35. The FIO interviewed the Respondent about whether there were underlying legal transactions undertaken for LIUK Ltd.

Matters in the Rule 7 Statement

36. The Respondent acted for AT Ltd in the acquisition of a number of properties. Whilst exchange was to take place between the seller and AT Ltd it was agreed, at the outset, that the properties would be completed in the name of M Partnership LLP ("M") and/or that M would have an interest in the properties. It appeared from the papers that DS was a significant figure in M.

37. The properties were not transferred to M and ownership was registered in the name of AT Ltd.

38. There was litigation between M and the Respondent as to his liability for losses said to have flowed from the failure to complete the transactions in the name of M. The Respondent denied acting for M, stated that it was agreed between M and AT Ltd that the properties would be registered in the name of AT Ltd and he issued a counterclaim. The Respondent accepted that he wrote and sent a number of emails which the Applicant alleged were inaccurate, misleading and untrue in relation to three different transactions.

227-229 W Road

39. By email dated 23 May 2008 the Respondent wrote to JS, a member of M, and copied the email to RN and DS of M (and others) an email stating:

> "Just to confirm as mentioned a few minutes ago that [AT Ltd] was the successful bidder for the properties at Preston (£730,000) and [W Road] (£2,260,000) and they will ensure that the properties are transferred to [M Partnership LLP] on completion. The contracts and auction pack are being sent to me so that we can deal with the completion of the purchase on your behalf.
>
> I note you will be sending us £73,000 to repay the deposit for Preston and £160,000 towards the deposit paid for [W Road]."

40. In an email of 7 July 2008 to the Respondent, headed "Green Lanes/ Preston/ [W Road]", RN of M wrote:

> "Please confirm that you have completed the above in [M Partnership LLP], urgently."

41. Shortly afterwards, the Respondent replied to RN stating,

> "First two completed (in M Partnership LLP), [W Road] completing (in M Partnership LLP) today and I will send you confirmation as soon as it is done.

42. On 8 July 2008 the Respondent sent an email to RN of M, copied to JS of M, headed "227/229 W Road" stating:

> "The above completed yesterday. Full address is …. Title number is…. The documents will be sent out later today."

48 GP, Green Lanes

43. On 2 May 2008 the Respondent sent an email to JS of M, copied to RN and others, with the heading "Green Lanes", stating:

> "Further to our telephone conversation of earlier today I confirm that S Solicitors will only be dealing with the exchange (because they are known to the sellers Solicitors). Once exchange has been effected [Mr AM] has instructed them to pass the file on to my firm for us to complete the matter."

44. On 8 May 2008 RN emailed the Respondent and another under the heading "Green Lanes" asking,

> "When is the completion date of the above?"

On 3 June 2008 JS emailed the Respondent, under the heading "Green Lanes" asking,

> "When is completion on the above?"

On 4 June 2008 JS emailed the Respondent and another, under the heading "Green Lanes", stating,

> "If I don't hear from you today re the above I will accept that we are not involved and will want my deposit returned."

45. RN of M sent to the Respondent the email referred to at paragraph 40 above on 7 July 2008 concerning this property and others and the Respondent replied by email, as set out at paragraph 41 above, indicating that Green Lanes and Preston had completed that day.

446 WH Road

46. On 18 July 2008 the Respondent wrote an email to RN of M stating,

> "Following our telephone conversation of yesterday we are trying to persuade the sellers solicitors that it should be treated as TOGC as requested by your father. As you know we have our own view on the matter but I note our instructions are that if and when it is claimed it will be dealt with at that time and paid if necessary.
>
> I confirm completion will be from the seller to [AT Ltd] and then immediately from [AT Ltd] to M Partnership LLP as requested.
>
> Following my telephone conversation with your father of this morning as requested I have spoken to [Mr AM] and we will be sending you the sum of £584,231.57 in the next half hour or so to cover the cheques that have been issued.
>
> If you have any queries on the matter please do not hesitate to contact me."

47. On 21 July 2008 the Respondent sent an email to RN about this property stating,

> "We have just completed the above after Barclays confirmed that the sale to [AT Ltd] is a TOGC. I note you will be treating the transfer from [AT Ltd] to M Partnership LLP in the same way."

Litigation between M and the Respondent

48. M commenced proceedings against the Firm in the High Court, the Particulars of Claim ("POC") in which were dated 7 June 2010.

49. At paragraphs 12 and 13 of the POC, there was reference to the emails set out at paragraphs 40 to 42 above. The POC alleged that the representation that the purchase of W Road had completed the previous day was false as there had been no completion in the name of M on 7 July 2008 or at all.

50. At paragraph 36 of the Firm's Defence, signed by the Respondent on 30 July 2010 with a statement of truth, the Respondent admitted the email exchanges set out at paragraphs 40 to 42 above and stated,

> "[The Respondent] sent his emails at the express request of [JS] who required [the Respondent] to provide a document for [DS's] accountant which indicated that [M] was the purchaser. [The Respondent] complied with [DS's] requirement despite the fact that the same did not reflect the correct position."

51. At paragraph 24 of the POC, there was further reference to the emails set out at paragraphs 40 to 42 above, in relation to the Green Lanes property. It was alleged that the Respondent represented in his email of 7 July 2008 that completion of that property had taken place in the name of M but that representation was false and the Respondent knew it to be false; there had been no completion of the purchase in the name of M by 7 July 2008 or at all.

52. At paragraph 52 of the Firm's Defence the Respondent admitted the email exchange noted above and repeated what had been said at paragraph 36 of the Defence i.e. that he had sent the emails at the request of DS and that he had complied with the request despite the fact that the emails did not reflect the correct position.

53. In the POCs at paragraph 34 M referred to the property at 446 WH Road and the email set out at paragraph 47 above and stated,

> "It was implicit in that statement not only that the acquisition by [AT Ltd] from the vendor had been completed, but that the acquisition by the [M] from [AT Ltd] had been completed. That representation was false and known by [the Respondent] to be false: although on 21 July 2008 a transfer of [446 WH Road] had been executed by the vendor in favour of [AT Ltd], there had been no transfer of [446 WH Road] into the name of [M] by 21 July 2008 or at all."

54. At paragraph 66 of the Defence, the Respondent admitted the email exchange referred to at paragraph 47 above and again stated that the email was sent at the express request of DS, who required the Respondent to provide a document for his records

and for an accountant which indicated that M was the purchaser and that the Respondent complied with that requirement despite the fact that the email did not reflect the correct position.

55. In M's Reply and Defence to Counterclaim, dated 17 September 2010 at paragraph 28 it was denied that DS had made any request for the emails in issue and stated that there could not have been any reason for such a request. That paragraph went on to state,

> "If an unsecured loan had been made to [AT Ltd] [M's] accountants would need properly to reflect that loan. Furthermore, no honest solicitor would have complied with such a request for the provision of false documents."

The Respondent's Explanation

56. In a letter of 2 June 2011 the Applicant wrote the Respondent's then solicitors seeking the Respondent's explanation of the above matters. The Respondent sent a detailed response by email on 18 July 2011. That response included a number of allegations against DS and his various companies/organisations with which he was involved. The Respondent also indicated that M and AT Ltd had a tendency to change instructions at the last minute as to how various transactions were to be handled and that the those businessmen behind M and AT Ltd trusted each other. The Respondent also indicated that M was always aware of the true position.

Witnesses

57. Ms Sarah Taylor, a FIO of the Applicant, gave evidence for the Applicant on 19 March and was cross-examined by the Respondent. Ms Taylor was recalled on 20 March and gave evidence in relation to a transcript of her interview with the Respondent on 14 January 2011 and was further cross-examined.

58. The Respondent gave evidence on his own account and was cross-examined by Mr Goodwin.

<u>Ms Taylor</u>

59. Ms Taylor confirmed that she believed the contents of the FI Report, which she had prepared, to be true to the best of her knowledge and belief. With regard to the selected extracts from the interview with the Respondent which had taken place on 14 January 2011, Ms Taylor told the Tribunal that the extracts were a fair and accurate summary of what was said in the interview.

60. Under cross-examination, Ms Taylor told the Tribunal that during the investigation the Respondent had co-operated fully and had provided information when asked. She confirmed that she would have thanked the Respondent for being frank at the end of the interview in January 2011.

61. It was put to Ms Taylor that she had not advised the Respondent of the meaning of "recklessness" during the interview and had put it as an alternative to "dishonesty". Ms Taylor told the Tribunal that she had asked the Respondent if he had been

dishonesty, to which he said, "No" but when asked if he had been reckless the Respondent had said, "Yes."

62. The Respondent put to Ms Taylor extracts from the interview which he had recorded in his first witness statement (in particular from page 5 of his statement). Ms Taylor was not able to recall if those extracts were an accurate representation of what was said in the interview. She had selected extracts from the interview to put into the FI Report.

63. There was discussion about whether the Applicant's transcript of the interview should be put into evidence. It was noted that the Respondent was putting matters to Ms Taylor where she could not assist and that the transcript may assist. The transcript was not a document the Respondent had previously seen, although he had had the opportunity to listen to a recording of the interview, from which he had extracted a number of quotations. The Respondent appeared to be making the point that the extracts in the FI Report were misleading by omission. Mr Goodwin submitted that the quotes in the FI Report were accurate and that the facts in the Report had been agreed by the Respondent, although there was a possible issue concerning the Respondent's understanding of the way dishonesty and recklessness had been put to him. The Respondent submitted that the copy transcript produced by Mr Goodwin bore a date of 15 June 2011, but he had been told later than that date that no transcript had been prepared. The Tribunal retired to consider how to proceed.

64. The Tribunal determined that Ms Taylor should have the opportunity to refer to the transcript of the interview as the Respondent was asking her questions about the interview and Ms Taylor had told the Tribunal that she could not recall what was said. The Respondent was reminded that if there was anything in the FI Report, including in the summary, which he did not consider was correct he should put that to Ms Taylor. It was noted that the transcript should simply be a record of what was said; the Tribunal would consider how what was said should be interpreted and what the context was. The Respondent told the Tribunal that it would take over an hour to go through the transcript in detail, but he trusted that the Applicant had not falsified the transcript although certain points had been left out of the FI Report. The Respondent was content to proceed to put questions to Ms Taylor.

65. A copy of the transcript was produced to Ms Taylor, who confirmed that the extracts from the interview in the Respondent's first witness statement, in particular from pages 5 to 8, were substantially correct.

66. It was put to Ms Taylor that at the time of the investigation the Respondent had explained that he had been working very hard for his various clients and the files did not necessarily show all of the paperwork relating to the various matters, many of which were conducted by email, text and telephone. Ms Taylor told the Tribunal that at the time of the interview she had very limited paperwork but would have asked for the files (in particular relating to AT Ltd, AB Ltd, Mr RC and LIUK Ltd) and that the Respondent had not provided copies of emails or texts at the time, or later. The Respondent indicated that he did not disagree with that statement.

67. The Respondent put to Ms Taylor that she had not explained to him that "recklessness", in the context of Tribunal proceedings could carry a severe sanction.

Ms Taylor told the Tribunal that she had not discussed Tribunal sanctions or the meanings of dishonesty and recklessness. The Respondent put to Ms Taylor that in admitting he had been reckless he had meant he had been stupid and careless and that he should have been more careful in what he had said in the interview. Ms Taylor could not comment on what the Respondent meant when he admitted being reckless, but told the Tribunal that she considered that "reckless" meant that the Respondent had carried on paying out when he knew there was no money on the account.

68. Ms Taylor was released.

The Respondent

69. The Respondent confirmed that he believed the contents of his first and second witness statements to be true. It was confirmed that the Respondent could summarise his position when he had given evidence.

70. Under cross-examination, the Respondent told the Tribunal that he had been admitted as a solicitor in 1986. His practice had been in residential and commercial property, with a speciality in secured lending. The Respondent told the Tribunal that he had acted for C Ltd ("C"), who were commercial lenders, in well over a thousand cases. Other solicitors would act for the borrowers, but through his dealings in these matters he would receive referrals such that in some cases the borrowers later became clients.

71. The Respondent confirmed that he admitted allegations 1.1 and 1.2 and that these allegations were in themselves serious. At paragraph 126 of his witness statement he had stated,

> "I am under no illusions; the misconduct is extremely serious and I fully accept that."

72. The Respondent accepted that solicitors should be of the highest integrity and trustworthiness. He did not accept that he had fallen below the standards expected of solicitors and that one had to look at the reasons for the misconduct. The Respondent told the Tribunal that he had lived by the highest standards of the profession and, for example, had dismissed employees who had made mistakes as he would not allow the taint of wrongdoing to affect his Firm.

73. The Respondent accepted that what had happened was wrong. He did not think he was in his right frame of mind so as to be able to understand what was going on; everything had gone wrong at one time. His new clients (AT Ltd etc.) had been introduced by C, who had been the Respondent's best client. The Respondent had worked whatever hours it had taken to ensure he delivered a good job for his clients. The Respondent referred to a reference from Mr RT, a director of C who had confirmed that the Respondent had been held in high regard by C.

74. In response to a further question, the Respondent confirmed that, with regard to the matters in allegation 1.1 and 1.2, he had fallen below the standards of solicitors. He accepted that the SAR were important and that the money of one client should not be used for others but this had happened.

75. The Respondent accepted that he was responsible for the breaches, but had been driven to it by his new clients, who were not governed by the SAR. The Respondent told the Tribunal that if he was in his normal state of mind he would not do something wrong because a client asked him to. The Respondent told the Tribunal that he considered the duties of stewardship of client money to be right and proper, and not onerous.

76. It was put to the Respondent that he did not have a mental condition such that he did not know right from wrong; the Respondent told the Tribunal that he thought his condition was such that he did not use proper judgement and that it did not make sense to him that he would have behaved as he had. The Respondent told the Tribunal that he had been receiving treatment from a Dr S, who had been unable to prepare a report as she was engaged in giving evidence in other court proceedings. The Respondent told the Tribunal that Dr S was clear that at the relevant time the Respondent did not know what he was doing and that he had had some sort of severe depression. Dr S had referred to the Respondent doing something even when he had known it would hurt him. The Respondent told the Tribunal that he had been up to his eyes in work but when someone asked a favour he would do it, even though he had other things to do, and that happened again and again.

77. The Respondent told the Tribunal that he thought his ability to carry on his practice had been affected. The Respondent told the Tribunal that his mother had become ill and he had looked after her until the Respondent and his family were unable to cope after further illness and the Respondent's mother moved to a nursing home prior to her death. The Respondent's business partner, Mr Godman, became ill and died quite quickly after being diagnosed with cancer in 2009. Suddenly, the Respondent had taken on all of Mr Godman's work, which was in a different area of law; he did not want to make Mr Godman's secretaries redundant. The Respondent told the Tribunal that he could not cope with the demands of all of his clients and Mr Godman's, and he started missing deadlines.

78. The Respondent told the Tribunal that when things had gone wrong and the accountants had noted the problem the Respondent had insisted on reporting matters to the Applicant. When Ms Taylor carried out the inspection he knew that it was because of the accountant's report. The Respondent told the Tribunal that he had given Ms Taylor all the information she wanted; she had been very helpful and he had set about fixing the problem. The Respondent acknowledged that the accountant would have had an obligation to report matters to the Applicant, but told the Tribunal that the accountant had asked him (the Respondent) before doing so.

79. In response to questions about his health, about which the Respondent had given some information in his statements, the Respondent told the Tribunal that he had had problems with depression from about 2007; he had been able to go to work but the Respondent said that he had not been efficient by his usual standards. The Respondent had first seen a psychiatrist in May 2013, after being referred by his GP. The Respondent told the Tribunal that he had seen his GP regularly about other problems, in particular heart problems from 2009/10. Mr Goodwin referred to Dr Rozewicz's report of March 2014 which suggested that the Respondent had been told in 2010 that he required cardiac surgery and that the Respondent's cognitive function had deteriorated since 2012. The Respondent told the Tribunal that

Dr Rozewicz's report (September 2013) also stated that the Respondent had been depressed from 2008.

80. It was put to the Respondent that Dr Rozewicz's second report referred to the Respondent having been depressed since 2008, both because of the death of his mother and his cardiac problems and went on to say,

> "This depression has had an impact on his ability to make appropriate decisions and professional judgements at that time. The depression has deteriorated since then."

It was put to the Respondent that this was the highest at which the evidence put the Respondent's difficulties with professional judgments, but it did not suggest that his ability to tell right from wrong was damaged. The Respondent told the Tribunal that he thought the report did show this. The Respondent could not identify a passage in the report which referred to his ability to tell right from wrong, but said that Dr S had told him this ability had been affected. It was only at the last hearing, on 13 February 2014, that the Tribunal had indicated the sort of evidence on health it might want and the Respondent had not been able to obtain a report from Dr S. It was put to the Respondent that the substantive hearing had been listed for November 2013 and in adjourning that hearing the Tribunal had given directions for preparation of a report on the Respondent's medical condition. The Respondent told the Tribunal that he had not been particularly well after that hearing. He had had a battle with his health insurers about funding his treatment, which had been stopped for a while. It was only at the last hearing that the Respondent had realised that a report from Dr S, who is a psychologist, would be helpful. Dr S had been seeing the Respondent for Cognitive Behavioural Therapy ("CBT") sessions since he had been assessed and given medication by Dr Rozewicz. The Respondent told the Tribunal that he had not realised that a report could be relevant to his defence to the allegation of dishonesty; indeed, he had not known he had been ill until he had been diagnosed in 2013.

81. The Respondent told the Tribunal that he had been represented by solicitors at the time the Rule 7 Statement had been issued. He had had a lot to deal with, including the intervention into his Firm and redundancy payments for staff. He had given the documents (Rule 5 and Rule 7 Statements) to his solicitors who had assisted with drafting a witness statement but had not given him any advice about defences to the allegations.

82. The Respondent was asked about the proceedings brought by M against his Firm. He confirmed that he had signed the Defence and Counterclaim document dated 30 July 2010 (referred to at paragraphs 50, 52 and 54 above). The Respondent told the Tribunal that he had "switched off" earlier in the hearing when Mr Goodwin had referred to the emails of 7 July 2008 – see paragraph 41 above. The Respondent noted that his emails of 7 and 8 July 2008 were printed on sheets which named two individuals whom he did not know. He told the Tribunal that he would have sent the emails, and the email address shown was his; he did not challenge the words shown in the emails were what he had written.

83. The Respondent told the Tribunal that he could not 100% remember if the emails were inaccurate (re 227-229W Road). It was put to the Respondent that in the

Defence to the High Court proceedings he had accepted that the emails were inaccurate – see paragraphs 50, 53 and 54 above. The Respondent told the Tribunal that the Defence was subsequently amended, after insurers were involved. The Respondent told the Tribunal that DS knew the true position at the relevant time. He accepted that if one put the words under a microscope, the emails could be misread but DS could not have misread them as he knew what was going on.

84. The Respondent told the Tribunal that DS and Mr AM had formed a new business relationship from 2008, involving investment in properties. DS invested £15 million in a 6 month period in relation to 10 or 12 properties. The businessmen would look at a suitable property but initially would not decide how the purchase would be funded, whether it would be purchased by one or the other of them and whether one would lend money to the other, for the deposit or otherwise to enable one of them to buy the property. The file would be opened in the name of Mr AM. The Respondent told the Tribunal that DS was not his client at first. There was a lot of "horse-trading" between DS and Mr AM about lending and in which name the property was to be bought. Decisions were not made until the last minute, often the day of completion, but both DS and Mr AM would know what had happened. All had been well until the property market changed during 2008, when DS realised he had invested £15 million with Mr AM and alleged that he thought the properties had been in his name.

85. The Respondent told the Tribunal that the Defence to the High Court proceedings had been done as best as he could, but it was re-done when insurers were involved. The Respondent said that if dishonesty had been found in those proceedings the case would not have settled and the case would not have been covered by the insurers. It had been a commercial decision to settle the claim.

86. The Respondent told the Tribunal that the contents of the emails could have been inaccurate, but DS knew the true position; he then told the Tribunal that he did not think the emails were inaccurate. The Respondent stated that M knew that the properties had been registered in the name of Mr AM/his companies. The Respondent accepted that when he signed the Defence, which he had confirmed was true, he had said the emails were inaccurate but told the Tribunal that he could not say that the Defence had been properly pleaded. The Respondent told the Tribunal that he had read the Defence and had signed the statement of truth. The wording of paragraph 36 of the Defence – set out at paragraph 50 above – was put to the Respondent. The Respondent accepted that the Defence was worded as it was and that it had been drafted by counsel on his instructions. However, it could have been explained better and the Respondent did not accept that the email he sent was inaccurate. The three properties referred to have completed in the name of AT Ltd; DS knew this and that if there was a dispute the property was being held on trust by AT Ltd and AT Ltd was paying rent. The Respondent told the Tribunal that he should have clarified the point but he was not a litigation solicitor and this had been the first time he had been involved in litigation. He had relied on counsel to draft the document.

87. It was put to the Respondent that he had been asked in a series of emails to confirm the same information about purchase of the properties. The Respondent told the Tribunal that DS was arranging finance and wanted an email for his records as he was borrowing from others and he would say that he could not send the money until he had the emails.

88. In response questions from the Tribunal about what the words, "… (in M Partnership LLP)" meant in the email of 7 July, the Respondent told the Tribunal that it meant that M would be owners or beneficial owners. The Respondent stated that what he should have written was a whole paragraph about completion being in the name of AT Ltd but beneficial ownership being with M. The Respondent told the Tribunal that in the High Court proceedings DS could not show that the Firm had been acting for him/M. The Respondent told the Tribunal that in the various transactions M provided money and would acquire a beneficial interest whilst legal ownership went to AT Ltd. During 2008 DS had realised that he had invested £15 million with AT Ltd, which had been a "blue chip" company but its rating reduced during 2008 and it could not secure new lending.

89. The Respondent stated that the email of 7 July 2008 could have been expressed more clearly. He referred to paragraph 70 of his first witness statement, which read:

> "Consequently, when at one point when it was agreed by the parties that the completion of these particular properties were going to be in the name of these particular companies, shortly before the actual completion dates, at [DS'] request, I issued conformations in the form specifically requested by him. Immediately prior to completion, however, in the case of these few particular properties the parties agreed the completion would take place in the name of an A Group company. All the parties knew the situation and so there was no need to retract any documents that had already been (correctly at the time) issued. The transactions were then completed as per the parties' instructions and request."

The Respondent confirmed that the email had been at the request of DS and could have been better expressed. The Respondent agreed that he should only make accurate representations. There had been no dishonesty as the client asked for the email in this form. At the time, the Respondent thought what he had written was sufficient because he knew the context but he accepted he should have written more.

90. The Respondent told the Tribunal that he had a file for Mr AM and his company but could not say in whose name the various properties would be completed or how the purchase would be financed as there were various options available. DS sent in the money and there would have been a telephone call to agree how to proceed but there was no time to write a letter as all would want the matter to complete as soon as possible. The Respondent accepted that it would be wrong to act on client instructions if those instructions were to do something wrong. The Respondent agreed that he knew that the completions on 7 July had been in the name of AT Ltd, but that the beneficial ownership went to M. The Respondent told the Tribunal that in the High Court proceedings, which had settled, DS had backed off from suggesting the emails had been misleading.

91. The Tribunal adjourned for lunch for about one hour, after which the Respondent confirmed he was ready to proceed.

92. The Respondent confirmed that his responses to questions about the other two properties (Green Lanes and 446 WH Road) as they had been in relation to 227-229

W Road. The Tribunal accepted that there was no need, therefore, for the questions to be put again as the responses would be the same.

93. The Respondent told the Tribunal that Mr AM had been introduced to his Firm by C, his biggest client, towards the end of 2007. One of the first matters in which the Firm had been instructed concerned potential finance from a lender in Manchester, but the terms were not good. The Respondent's wife's company, John Doe Ltd, had been in a healthy position, having loaned £900,000 to someone else which loan was about to be repaid. The Respondent told the Tribunal that Mr AM had already exchanged contracts for certain properties and would have lost his deposit if it did not proceed. As C had dealt only with what the Respondent described as "blue chip" borrowers, it was an easy decision to decide to lend Mr AM the money he needed. The Respondent thought this was in about December 2007 or January 2008.

94. The Respondent was asked if the loan was documented. The Respondent told the Tribunal that he had never been fascinated by money or attached to it. The company had previously loaned money to a client, with the only document being a Promissory Note, signed after the event, and that loan had been repaid in December 2007. The new client, Mr AM, seemed trustworthy. The Respondent told the Tribunal that when he made the loan AT Ltd had not completed any matter on which it had instructed the Firm, although the Firm may have opened a file concerning the abortive purchase of a plot of land in Hertfordshire. On the Respondent's assurances about AT Ltd, two other clients had loaned AT Ltd money; £2.5 million in one case and £1 million in another. The Respondent having faced bankruptcy, he could now hardly believe that he had once had £1 million and it had now gone. The Respondent told the Tribunal that nothing on which AT Ltd had instructed his Firm had proceeded prior to the loan being made.

95. It was put to the Respondent that, as stated in the FI Report, the Respondent had informed the FIO that he would provide her with information with regards to the loan. The Respondent told the Tribunal that the FIO may have asked about this in passing. There were documents on the Firm's computers, which were with the Applicant since the intervention. These included a letter to the client and loan documents. The Respondent told the Tribunal that AT Ltd/Mr AM had been acting for themselves in this matter, had been advised to take independent legal advice and that the loan was unsecured and for a period of one year, or possibly six months. The document had been quite simple. The Respondent had not been repaid and AT Ltd had gone into administration in December 2009. The company's administrators had wanted the documents and had seen them; the Respondent had not been aware they would be needed for the Tribunal.

96. The Respondent told the Tribunal that LIUK Ltd was run by Mr AM's brother-in-law and that he thought the company had bought a couple of properties in London. The ledger for LIUK Ltd had received £200,375 from S Ltd. The Respondent could not now recall what the payment was for, but he was sure that this was not the first file for LIUK Ltd. The ledger recorded that the payment was noted to be for "Payment on account of AMLD as requested by BM". The Respondent stated that this must have been about Amusement Machines Licensing Duty and that BM was someone who helped to run the company. It was put to the Respondent that he had told the FIO that the payment was for an investment in assets of AT Ltd. The Respondent told the

Tribunal that without the paperwork he could not say what the position was, but on the same day as the money was received it was paid out to M 929 towards payment for an asset. M 929 was a different company within the same group, as was S Ltd. M 929 was buying assets of the AT Group which was by then in administration.

97. In response to a question about why this payment was made through client account, the Respondent told the Tribunal that he thought there had been exchange of contracts but with a long completion date. Clyde and Co had been acting in the purchase transaction, which was too large a matter for the Respondent to handle and he had been dealing with the smaller issues. M 929 had been under pressure from the administrators to pay the money, which they did not have initially. LIUK Ltd, S Ltd and Mr AM all wanted to be part of the purchase and the money had been passed to the Respondent with the understanding that it would be sent on when the purchasers had the necessary protection.

98. It was put to the Respondent that this was a matter in which money had simply come into and out of client account and that he had not been involved in any underlying legal transaction. The Respondent told the Tribunal that he had been involved in sorting out problems with AMLD but the transaction had ultimately failed to complete by December 2010. The Respondent told the Tribunal that the £200,375 had been for AMLD which would have to be paid by Clyde and Co, but they would not accept the money from parties for whom they were not acting; they acted only for M 929. The protection that the Respondent had given S Ltd and others was that he checked that Clyde and Co would use the money only for AMLD. The Respondent said that there would have been an email trail about this and that he had been acting for the companies proposing to acquire an interest in M 929 i.e. S Ltd and LIUK Ltd. They were seeking to lend M 929 money towards the costs of acquiring an interest in the assets of AT Ltd in return for some sort of shares. Clyde and Co had corresponded with the Respondent. The Respondent told the Tribunal that he thought there was a document about the interest that his clients were seeking to acquire. As completion had been delayed, there had been various extensions and contracts had been re-exchanged so there would have been documents about the various interests.

99. In response to a question about whether he had been paid for his advice, the Respondent said that he was going to be paid, on this file and others. He would bill as and when the clients had surplus money available.

100. The Respondent told the Tribunal that the loan of over £200,000 would have been documented and was easily verifiable, but he had not seen the importance of making enquiries to locate those documents and he had not been asked to do so. The Respondent was asked why the payment which was meant to be for AMLD had not been made directly to HMRC or the Gambling Commission. The Respondent told the Tribunal that the liability to pay rested with M 929 and S Ltd had been lending money on the basis it would acquire a share of the assets of AT Ltd. If the money had been paid directly the payer would have been unprotected and S Ltd looked to the Respondent to protect its interests. The Respondent was asked about the fact that the cheque for £200,375 had been returned unpaid on 26 November 2010 but the entry in the ledger had not been made until 1 December 2010. The Respondent denied that this was significant and told the Tribunal that he would have chased the client(s) when he found the cheque had been unpaid. The Respondent told the Tribunal that he had

not made the entries and that he was not good with accounts; he would not go into the detail but he would be aware of money coming into the Firm.

101. In relation to the payment out to OG Ltd on 3 December 2010 the Respondent told the Tribunal that he thought that company was also looking to acquire an interest in M 929 but they had pulled out and their money had been returned to them.so that the account was in debit. The Respondent told the Tribunal that he would have been told by Mr AM or Mr RC that money would be sent into the Firm to cover the payment out to OG Ltd.

102. The Respondent denied that what had happened here was odd, but described it as a tragedy as he had been let down by his clients. The Respondent told the Tribunal that he should not have accepted what they told him and should have slowed matters down as everything was going too fast. He had not been able to think clearly and so had accepted what they had said at face value. The Respondent told the Tribunal of the high esteem in which Mr AM had been held by the Sikh community and that when he and others made promises, including promises on their childrens lives, he had accepted what they said.

103. It was put to the Respondent that the Respondent had no-one to blame but himself. He denied this and said he was not to blame; his clients had duped him. They had sent emails and texts to say that the money was in the system. The Respondent said he had misplaced his trust and as a result had lost everything; there had been nothing in it for him.

104. It was put to the Respondent that he had done his best to assist his various clients as a means to recover the money which had been loaned to AT Ltd. The Respondent told the Tribunal that he had never pressurised or sued clients for money, as it meant nothing to him. Various others had loaned money to AT Ltd and others and had lost it all. The Respondent was asked about the fact that no costs had been taken on the LIUK Ltd matter, which it was suggested was remarkable if he had been advising on a transaction. The Respondent told the Tribunal that he may not have billed on this ledger but had possibly rendered invoices on other ledgers to other companies. Further, he never billed matters as they went along and the busier he was, the less likely he was to bill it. The Respondent expected to act for clients in the long-term and that he would catch up with billing in future. A bill including the work he had done in this matter might appear on another ledger.

105. It was put to the Respondent that this explanation was nonsense and that he had been allowing his client bank account to be used as a banking facility for certain clients. The Respondent denied this, telling the Tribunal that his clients were busy and might be involved in a number of disputes. One way to deal with such matters was to send some money to the Respondent who would have instructions to negotiate on behalf of his clients and as he was holding money to settle a matter that would help in the negotiations. The Respondent told the Tribunal that he had been involved in sorting out legal problems for his clients and that he would have billed at some time, on one ledger or another.

106. The Respondent was asked about the various deposits of money with the Firm by GA. The Respondent told the Tribunal that the money was sent through GA rather than a

bank as there were GA branches close to the betting shops run by his client companies. Whilst the payments via GA did not solve the problem of the debit balances they had helped. The Respondent told the Tribunal that the money had to come into the Firm, for example to pay the money to OG Ltd as quickly as possible.

107. The Respondent told the Tribunal that a solicitors' firm, MDR, had acted for the directors of the various companies as individuals in a dispute with the Gambling Commission and that he had attended some of the meetings to give a second opinion, using his expertise in negotiations. The Respondent told the Tribunal that his role had included putting a brake on MDR running up excessive fees. The Respondent told the Tribunal that he had also attended as MDR asked him what he thought; he had been dealing with some of their problems. The Respondent told the Tribunal that he had been involved in hundreds of emails with MDR and it would be possible to see from his Firm's computers what he had done. The Respondent agreed that he had no expertise in litigation with the Gambling Commission but a lot of clients wanted him to attend meetings with other solicitors as they trusted him.

108. It was put to the Respondent that his clients had wanted him involved as he would allow his client account to be used. The Respondent told the Tribunal that where there was a deadline his clients would swear that there was money in the system and he would send out money on that assurance. The Respondent told the Tribunal that he was possibly aware that when he sent £20,000 to JW Solicitors on 15 December 2010 the debit balance increased to £150,000. The £20,000 had been sent for legal services provided by that firm. As with MDR, the clients had asked the Respondent to attend a meeting at JW's offices with counsel who was advising in relation to betting office licences. Although everyone knew that the Respondent was not an expert in this area, he had dealt with some of the leases and his skill was being able to see things which others could not see in a situation. The Respondent told the Tribunal that he had been copied into lots of emails in this matter, to be another pair of eyes to review the issues.

109. In relation to the Defence in the High Court proceedings, the Respondent said that he had placed all his reliance on his legal advisers and had stated that the contents of the Defence were true. The Respondent told the Tribunal that it had bought the clients some more time as he had received the money which was due to be paid to JW on account of costs, but they could have paid directly if they had had the funds.

110. The Respondent accepted that in making payments when he did not hold sufficient funds for a client he had inadvertently used other clients' money. He told the Tribunal that he would not have paid out if he knew there was no money; in each case he had been expecting money in. The Respondent denied that he had been reckless, as that term suggested he had not been bothered about the consequences or had closed his eyes to the consequences. It was put to the Respondent that it was reckless to pay out monies from client account without checking that there was money held. The Respondent told the Tribunal that he would have checked with the book keeper or the payer; he accepted that he may have made a mistake in doing the latter.

111. It was noted that there had been a debit balance on client account on the matter of LIUK Ltd from 3 December to 20 December 2010 and it was queried if this was a normal occurrence and whether the book keeper had queried the position with him.

The Respondent told the Tribunal that the book keeper, Mrs B, was a very experienced legal cashier and should have queried the debit balance with him. Mrs B's mother had been poorly. The Respondent told the Tribunal that Mrs B would have known that there was a problem if there was a debit balance. In response to a question about what the procedure was if a cheque was unpaid – as this appeared to be the root of the problem on the LIUK Ltd ledger – the Respondent said that the bank would return the cheque to the Firm. The post would be opened by the Respondent or a colleague, who would distribute the post if the Respondent was not there. The Respondent told the Tribunal he would perhaps be told if a cheque had been returned and he would telephone the clients. The Respondent told the Tribunal that this happened quite a bit. The clients would explain what the problem was and give assurances about when the money would be paid and the Respondent would then carry on with the work.

112. The Respondent told the Tribunal that in 16 or 17 years of practice, prior to taking on the clients linked to Mr AM/AT Ltd, he had perhaps had two cheques returned. He had always been cautious and had never paid out until he had cleared funds. The Respondent said that he understood that in some circumstances one could pay out against uncleared funds if one could make up the shortfall in the event the payment did not clear. The Respondent told the Tribunal that in 2007/8 he had had wealthy clients who could pay money into the Firm in a flash and generally there was not a problem. The Respondent told the Tribunal that he had reported the problem with debit balances to the Applicant and then there had been further problems.

113. The Respondent was asked about a payment into the LIUK Ltd ledger on 30 November 2010 of £200,000 which was stated to be for, "MS – part deposit on exchange of business". The Respondent told the Tribunal that MS had sent in the money for share of M 929 but the matter did not proceed and the money was returned to MS on 3 December 2010.

114. The Tribunal adjourned to allow a break for the Respondent at about 3.30pm. It was noted that the case would not finish on 19 March. The Respondent would be able to consider his submissions overnight. The Respondent resumed giving evidence at about 3.50pm.

115. It was put to the Respondent that a payment of £20,000 had been made to JW solicitors when there was already a debit balance of £130,000 on the ledger and that it was wrong, and the Respondent knew it to be wrong, to continue to pay out when he was aware of the returned cheque. The Respondent told the Tribunal that he obviously was not aware that it was wrong. The Respondent told the Tribunal that he would receive incoming post and would have seen the returned cheque. The Respondent referred to the earlier evidence – set out at paragraph 107 above – concerning his attendance at meetings with MDR. He gave an example of an entirely different matter in which he had been instructed to attend to a matter for a client despite not knowing that area of law. In the matter involving MDR the Respondent told the Tribunal that he had selected the leading counsel to be instructed by MDR as the clients trusted him more than they had trusted MDR on this point. The Respondent told the Tribunal that this was not because he took a more relaxed approach to matters but because they knew he would do his best and was not motivated by money. It was put to the Respondent that the clients in question had

found that the Respondent would do as they wanted. The Respondent told the Tribunal that he had never before been abused by clients in this way.

116. The Respondent told the Tribunal that from about 2008/9 he was out of the office more than he had been previously, attending meetings and looking at properties for his clients. If he was in the office he would see cheques coming in and returned cheques but in his absence the post would be opened by a solicitor, A. The Respondent told the Tribunal that a returned cheque would have been passed to Mrs B, the book keeper. The Respondent had trusted her as she was experienced and would have drawn a returned cheque to the Respondent's attention. It was put to the Respondent that to continue to pay out when the cheque had been returned was wrong. The Respondent told the Tribunal that it had become wrong, but he had been assured by his clients that money was on its way e.g. by telegraphic transfer. It was put to the Respondent that he knew that when a client ledger was in debit he was using other clients' money. The Respondent told the Tribunal that be believed he would be paid that day. If there was a debit he would want an assurance that it would be paid before he would pay out and if he was satisfied with the assurance he would pay out. The Respondent told the Tribunal that as he knew there was a shortage of £130,000 on the LIUK Ltd ledger he must have had an assurance before paying out the £20,000 to JW solicitors.

117. The Respondent was asked about the payment of £20,000 to S Ltd on the LIUK Ltd ledger on 20 December 2010. The Respondent told the Tribunal that he could not now remember what that payment was for and that if the FIO had asked him it would have been recorded in the FI Report. It was put to the Respondent that the client had asked him to pay the money out. The Respondent told the Tribunal that he would not do such a thing and that he had not been aware there was a debit of £130,000 on the account; he thought that the money was coming in. The Respondent told the Tribunal that he must have had an assurance about the money and two lots of £10,000 had been paid in via GA on 20 December 2010. The payments in had been noted as being for, "Payment on account for S Ltd" and the Respondent told the Tribunal that there must have been a purpose for this payment. The Respondent told the Tribunal that the payments had been placed on this ledger as S Ltd must have been repaying a loan (from LIUK Ltd).

118. In response to a question about whether there was any legal work done in this matter, the Respondent told the Tribunal that there had been hundreds of emails on this ledger and that the Applicant had the records. The Respondent told the Tribunal that it was now 5 (sic) years after the event and he would not recall the details but had written what the payments were for on the blue paying-in slips so that Mrs B would enter the information on the ledger. The Respondent denied that what had happened was to pass clean funds on to S Ltd.

119. The Respondent was asked about Mr BM, who was noted on the ledger as giving instructions or requests concerning AMLD. The Respondent told the Tribunal that Mr BM was the Chair of M 929. The Firm had not acted for that company on the purchase of assets from AT Ltd (in administration) but he was doing something for them; the Respondent could not recollect what that was. The Respondent told the Tribunal that he had not been aware of any conflict of interests.

120. The Respondent was asked about payments into the ledger of Mr RC. The ledger showed two receipts totalling £20,000 from GA on 25 May 2010 marked on the ledger as "GA – payment on account vehicles" and a payment out the same day of £66,322.55 which was marked on the ledger as "Mercedes Benz Financial Services settlement figures for 3 vehicles." It was put to the Respondent that paying for cars for Mr RC was not legal business. The Respondent told the Tribunal that the matter concerned a dispute about three leased vehicles. Mercedes Benz attended the client's premises to remove the cars and wanted nearly £100,000. The Respondent had spoken to the car company who had agreed to accept a lesser figure, provided payment was made that day. The clients had told the Respondent that they would pay that day and when the Respondent knew that some money had arrived he expected the rest to follow. Although it had not all been paid on the day, a further £30,000 had been paid in on 26 May 2010. It was put to the Respondent that a telephone call with Mercedes was not underlying legal work (so as to be a proper use of client account). The Respondent told the Tribunal that he had been trying to settle a dispute before litigation started and that he was probably involved for two or three days. The Respondent told the Tribunal that he had told the FIO that there were emails about this matter which would be on the Firm's computer. Mr AM must have said that he would pay the money and he had been told by Mr RC that the money was on its way. The Respondent told the Tribunal that he had been out of the office, sitting in his car with Mr P, a financial adviser to Mr AM, when he (the Respondent) had telephone the office to authorise the transfer to Mercedes. There had been a dispute about the amount to be paid; a figure had been agreed so that Mercedes did not repossess the cars. The Respondent told the Tribunal that he would have received instructions to make the payment on 25 May and after that would have sorted out the paperwork with Mercedes.

121. It was put to the Respondent that in making the payment he had used other clients' money and the Respondent agreed that this was the case, but he had not known it was wrong. It was put to the Respondent that he had wanted to keep certain individuals happy. The Respondent told the Tribunal that the clients probably knew that he could pay. He had had assurances from respectable and well-heeled businessmen and Mr AM in particular was well-respected. The Respondent accepted that he had used about £46,000 of other clients' money in this matter, but it had not been deliberate or dishonest; he had believed the money due from his clients would be placed into his client account. The Respondent told the Tribunal that he had seen that there had been two payments in, each of £10,000 just before the deadline to make the payment out and had believed the account would be credited further later that day. The Respondent told the Tribunal that every conveyancing solicitor in the country faces a similar issue with completions where one had to decide at the cut-off point whether to accept the money was on its way. The Respondent told the Tribunal that it would depend on who the client was if one accepted that assurance.

122. It was put to the Respondent that to suggest that whether or not one would make a payment out where there were no cleared funds on the client ledger would depend on who the client was showed a misunderstanding of the SAR and recklessness with regard to the application of the SAR. The Respondent told the Tribunal that he would consider who the client was and that it was acceptable to do so; if one knew and trusted the client and had confirmation the money was in the system it was acceptable to make a payment out. The Respondent accepted that if the money was not there it

would mean that other clients' money was being used. He told the Tribunal that there was no problem if clients and banks did not let the solicitor down and the solicitor had his own money to pay in if necessary.

123. The Respondent was asked about three receipts of £10,000 each on 26, 27 and 28 May 2010 on the Mr RC ledger, which reduced the debit balance to £16,322.55 but on 18 May 2010 there was an inter ledger transfer of £15,000 to AB Ltd. The Respondent agreed that this transfer had increased the debit balance on the ledger. He told the Tribunal that it did not appear that he had discussed this transfer with the FIO but he thought the transfer was a repayment of a loan from one company to another. The Respondent denied that he was allowing his client account to be used as a bank for his clients. The Respondent was asked about a payment of £12,000 to J&J Leisure, also on 28 May 2010. The Respondent told the Tribunal that J&J supplied machinery for his clients' businesses. There had been a long running dispute, with the possibility of J&J buying some arcades or entering a share purchase agreement.

124. It was put to the Respondent that in making the payments for Mr RC the Respondent had been using other clients' money. The Respondent acknowledged that this was what had happened but told the Tribunal it was not the intention. The Respondent told the Tribunal that there would have been a perfectly valid explanation if he had been asked at the time but it was over three years ago; the Applicant could have asked the clients. The Respondent rejected as absurd the suggestion that his actions in using client money in this way had been deliberate. It was put to the Respondent that the same thing had happened more than once; the Respondent told the Tribunal that his clients told him categorically that he would be paid. The Respondent told the Tribunal that what he had done was not deliberate. His clients had formed the view that they could rely on him. It was put to the Respondent that his clients could rely on him to make payments regardless; the Respondent told the Tribunal that he did not allow his client account to be used as a bank and that he had had categoric assurances that the payments would be made.

125. It was put to the Respondent that he had made payments to Mercedes on 25 May on the basis of promises to pay and had made further payments three days later when he was still not in funds. The Respondent told the Tribunal that he had received some money in, but should have had more; he had been promised that cleared funds would be received. It was put to the Respondent that his clients had reneged on one promise but he had accepted another promise. The Respondent told the Tribunal that the promises were from people of substance, who swore on their children's lives and he had accepted those promises. The Respondent accepted that he had been stupid and naïve. The Respondent told the Tribunal that he did not know if he had been in the office on 28 May 2010 and without seeing the emails and texts he could not say on what basis he had agreed to make the payments out. The Respondent accepted that he had not been careful enough, having been let down previously. The Respondent accepted that he should have been cautious after the first time he was let down and he had obtained promises to make the payments. The clients had convinced him they would pay. The Respondent told the Tribunal that he was defrauded by his clients, due to his trusting nature; when his clients swore on the Holy Book, he would trust them.

126. The Respondent was referred to the payment into the Mr RC account of £60,000 on 3 June 2010, which produced a credit balance, but there was a payment out the same day of £86,600 to AS Ltd which again caused the account to be overdrawn. The Respondent told the Tribunal that he would not accept the assurance of just anyone. He may have been shown something showing a payment in, but the money had possibly been paid in or out on the wrong account. The Respondent accepted that in paying out £86,600 on 3 June 2010 he had used other clients' money and that this was wrong, but he did not know that at the time. The Respondent told the Tribunal that he thought AS Ltd was buying a property at auction from the administrators of AT Ltd.

127. The Respondent was referred to passage of the interview with the FIO on 14 January 2011 which was recorded in the FI Report in which the FIO referred to the payments out for clients causing the client account to be nearly £600,000 overdrawn and it was suggested to him that he had knowingly made these payments when he probably knew it was wrong to do so. The Respondent had replied, "Mm, I would agree." The Respondent told the Tribunal that he had not been asked about particular payments, and at that point could have answered but he did not know why the payments had been made some three years later. It was put to the Respondent that as an experienced solicitor he knew it was wrong to use other clients' money and to pay out in excess of the monies held for a client. The Respondent told the Tribunal that he had proceeded on the basis of the assurances that he had had. He had not been dishonest and although he was not stupid he was naïve in money matters. The Respondent told the Tribunal that he had never chased money. He had earned something about £200,000 per annum at one point and his bank client (C) had paid well. The Respondent told the Tribunal that he had not negotiated his fees with the bank but had accepted what they usually paid solicitors, which was 0.5% of the value of each transaction. The Respondent told the Tribunal that he would work round the clock to get the job done for his clients. It was put to the Respondent that he was not lost in the commercial world, and that he had himself made loans. The Respondent told the Tribunal that this had happened about half a dozen times, linked to the refinancing of his wife's properties. The rate of return on his loan to AT Ltd at 2% per month was a good rate and more than could be obtained at a bank. It was put to the Respondent that he was very astute. The Respondent told the Tribunal that if he had been astute he would have taken proper security for the loan, as he knew how to do secured lending. The Respondent said he was very trusting with money, but would not allow a client to lend money without security. The Respondent told the Tribunal that he trusted the individuals involved. He and his wife had lost £1 million and had lost everything, having borrowed against their house. The Respondent had been made bankrupt and this showed how silly he was. The Respondent told the Tribunal that he had tried to raise money to pay the shortfall, but his friends had all wanted security.

128. As the time was approaching 4.50pm, the Tribunal decided to adjourn for the day. The Respondent was informed that he should not discuss the case with anyone but could prepare his final submissions.

129. On resuming his evidence on the morning of 20 March, the Respondent acknowledged that there had been a minimum cash shortage on client account of over £595,000 and accepted that this was serious as there should never be a shortage on client account.

130. The Respondent was referred to the FI Report where it was stated that on 6 August and 9 December 2009 sums of £250,000 and £42,500 respectively had been transferred from the designated deposit account for Mr D (deceased) to the general client account and then inter ledger transfers were made to the AT Ltd ledger in the same amounts. The Respondent agreed that this had happened, if that was what the ledger showed. The Respondent told the Tribunal that this was serious, but there would have been a reason. The Respondent told the Tribunal that if there was a shortfall the book keeper, Mrs B, may have said there was a need to transfer money from the deposit account to the general client account. The Respondent denied that there had been any scheme to use Mr D's money for AT Ltd. The Respondent agreed that there was no connection between Mr D and AT Ltd and that the transfer had been an unauthorised loan.

131. The Respondent told the Tribunal that the accounts were managed by Mrs B and that she would tell him if there was a need to transfer money between files. It was put to the Respondent that he had asked her to do this, but the Respondent told the Tribunal that Mrs B had picked the D deceased file and that she made lots of transfers. The Respondent told the Tribunal that if there was a shortfall Mrs B would transfer from a client account which was in credit to one which was in debit. The Respondent stated that he would not know which client accounts were in credit on any given day. Mrs B would tell him that an account was overdrawn and would transfer what she wanted. The Respondent accepted that this was not a proper procedure but that this is what Mrs B did. The Respondent told the Tribunal that he asked Mrs B what they could do (when client account was in debit) and she said that they could transfer money from the Mr D account, which was then put into the AT Ltd account. The Respondent was asked why he did not tell Mrs B that she could not do this. The Respondent told the Tribunal that he was not dealing with accounts day to day. Mrs B would present him with a whole bunch of transfers and he would sign them off. The Respondent told the Tribunal that Mrs B had said on more than one occasion that she would transfer money in this way, and he had not stopped her.

132. The Respondent told the Tribunal that this action had not been dishonest as he thought he would receive money from his clients at any time. The Respondent agreed that there had been an adverse effect in that the ledger balance on the Mr D matter had been reduced by, initially, £250,000. The Respondent told the Tribunal that he had described it as an unauthorised loan as he had not had authorisation from anyone connected with the Mr D matter to make the transfer and accepted that he had been responsible for the transfer.

133. The Respondent was asked why he was now blaming the book keeper for what had happened. The Respondent told the Tribunal that in the condition he was in he would expect Mrs B to say something about what was going on. The Respondent now knew that he had not realised at the time what he was doing. The book keeper had acted on her own initiative as he, the Respondent, would not know on which client accounts there was money and he thought that Mrs B would tell him how much she needed to transfer. The Respondent told the Tribunal that he did not blame Mrs B, as he was responsible for the Firm, but it would have been Mrs B who had given him the name of the Mr D account.

134. The Respondent told the Tribunal that all of the green slips the Firm had used for transfers were with the Applicant and they were all written by Mrs B. The Respondent told the Tribunal that Mrs B would write up the transfers and he would sign them; he accepted that he was ultimately responsible. The Respondent told the Tribunal that he had told the FIO about Mrs B's role and that what Mrs B had done was just balancing the books.

135. The Respondent told the Tribunal that he had admitted the technical offence of improperly using client monies for the purposes of other clients. He had known what was going on but told the Tribunal that he was very unwell and did not know what he was doing. The Respondent accepted that many solicitors work under pressure. His health had been reasonable until recently but he had not been able to cope with his mother's illness and death, the death of Mr Godman and 42 bereavements in 4 years amongst his family and friends. The Respondent told the Tribunal that he had been under pressure and could not think straight. It was put to the Respondent that these unfortunate events did not explain the Respondent's conduct and it was suggested that his conduct had been systematic. The Respondent told the Tribunal that he had had a good firm, a happy marriage and children. The psychologist and psychiatrist he was now seeing had tried to work out why he had made stupid decisions in those circumstances. The Respondent told the Tribunal that he had been overloaded with lots of decisions and in those circumstances would make mistakes. He had taken on Mr Godman's work as well as his own, which added to the pressures. The Respondent told the Tribunal that he had been very busy and that he wished he had sought help at that point; everything that went wrong was in the same period. The Respondent stated that, obviously, no-one in their right mind would do what he had done. The Respondent told the Tribunal that what he did was not to recover the £1 million loan, which had been written off in 2009.

136. The Respondent was referred to the transfer of £100,000 from the ledger of Mr A (deceased) to the AT Ltd ledger on 16 October 2009. The Respondent confirmed that there was no link between Mr A and AT Ltd. The Respondent told the Tribunal that this was another unauthorised loan and that he must have signed the transfer slips; he did not realise what he was doing was wrong at the time. The Respondent stated that he would never knowingly do anything dishonest.

137. The Respondent was referred to paragraph 23 of the FI Report in which it was stated, "[The Respondent] informed [the FIO] that he felt if he kept paying out for his clients they would eventually repay him." The Respondent told the Tribunal that he did not think he had said that. In his first statement, at paragraph 39, he had stated,

> "On each and every occasion that I sent monies out, I was assured in clear and unequivocal terms by the A Group that payment had either already been made or that it was in the banking system. It was therefore not the case, as seems to be suggested, of me making numerous payments *hoping* one day, they would *eventually* be repaid – such a suggestion gives the wrong impression. The promises had got more and more "intense" by which I mean that the personnel concerned were swearing on the lives of their children and the holy books. Knowing their backgrounds and standing in the business world, I did not think for a moment that they would let me down. They were extremely forceful and

persuasive and I believe they took unfair advantage of my personal situation which they knew all about." (Italics as used in the Respondent's statement).

138. The Respondent was referred to page 45 of the transcript and a passage which read:

"ST … by carrying on making out these payments on [AB Ltd] and their associated companies – it has caused your client account to be nearly £600,000 overdrawn – you knowingly have kept making these payments when you probably knew it was wrong to do so – would you agree?

RB I would agree.

ST You know – you probably knew that you shouldn't be doing it – but you, in anticipation…

RB According to the law…

ST You kept thinking…

RB Yes – according to the law or maybe according to the regulations – but in – but thinking that they would pay me back.

ST You thought they would make sure that you would be paid.

RB Yes – yea – and it might – to – it's always been tomorrow – tomorrow – tomorrow – everything was going to be great… but you know it never happens that way – it's not happened."

("ST" is the FIO and "RB" is the Respondent in the above passage).

The Respondent told the Tribunal that this meant that he thought he would be paid immediately and that his clients had indeed repaid some sums in the days immediately after the payments out.

139. The Respondent stated that the FI Report served a function but was not unbiased and impartial. The Respondent told the Tribunal that he disputed that the word "eventually", as used in the FI Report, was the right word and that he considered that the Report had been "sexed up" in places. The Respondent told the Tribunal that he accepted that the Report was factually correct but that the FIO had not behaved professionally. The Respondent referred to the fact that the transcript which was now being referred to bore the date 15 June 2011 in the footer. The Respondent handed up to the Tribunal copies of an email exchange he had had with the FIO, which so far as relevant read:

Respondent to FIO, 30 August 2011

> "… I received a copy of the interview that you conducted in January. Could you please let me have a copy of any transcript that has been made – it will save me the costs of doing this."

Respondent to FIO, 22 September 2011

> "I shall be very grateful for your response to my email below."

FIO to Respondent, 23 September 2011

> "Sorry for the delay in responding to you. I'm sorry but I only had transcribed the relevant parts of the interview that were detailed in my report."

The Respondent stated that the FIO had told him a lie, as the transcript was dated June 2011. The FI Report was dated 21 January 2011. The Respondent queried whether there was any other information he had not been given by the FIO. The Respondent stated that he should have had the transcript before 19 March 2014. He stated that he had been asked about various files, about which he could have produced information; it was unfair of Mr Goodwin to ask him questions about these matters as he did not have the information available. These proceedings could have very serious consequences for the Respondent and he told the Tribunal that Mr Goodwin was trying to trick him.

140. The Respondent accepted that he had had the FI Report for a considerable time but said he had not been able to deal with it due to his illness and bankruptcy, but had done his best. The Respondent stated that the FIO had not told him that what he said would be used for the Tribunal; she had said that he had been frank and honest with her and had confirmed there had been no discussion about the meaning of the word "reckless". The Respondent confirmed that he had had a disk with a recording of the interview (by August 2011, according to his email of 30 August 2011) and that he had listened to the bits referred to in the FI Report, as he knew that it would be taken out of context. The Respondent told the Tribunal that he had been put at a disadvantage as he had not seen the transcript until 19 March. The Respondent stated that he did not know until 19 March that the FIO was not qualified. He was astonished that the Applicant could decide to intervene in a firm on the basis of a Report from an unqualified person. The Respondent stated that the FIO had been deliberately dishonest in her response to him about there being no transcript.

141. The Chair indicated that it appeared that the Respondent was becoming distressed and that there would be some consideration of the Respondent's contention that he felt at a disadvantage. The Respondent told the Tribunal that he did not think that looking at the transcript would help his case. He considered that the FI Report was written to justify the action the Applicant was going to take. The Respondent stated that he would have expected the Report to say that he had been frank and honest, but it contained no good word about him and there were exaggerations in the Report. Mr Goodwin noted that the Respondent had made serious allegations about the FIO and it might be appropriate to recall her to explain the position and give the

Respondent the chance to put his questions to her. The Respondent had had the CD of the interview for some time and had used extracts from it in his own statements. It was decided that the cross examination should be concluded then the Tribunal would consider how to deal with these developments.

142. The Respondent confirmed that he had received the CD of the interview shortly after it had taken place and that in theory he had had the opportunity to listen to it but after the intervention everything had been upside down. The Respondent told the Tribunal that he had asked for a transcript and been told that it was not available. The Respondent told the Tribunal that he had listened to parts of the CD before preparing his statements but had had no chance before as he had been ill. The Respondent accepted that the FI Report was factual in nature, but that he did not know until 19 March that the FIO was unqualified; before that, he had taken what she said as Gospel. He did not know why the Applicant used unqualified people to investigate firms.

143. The Respondent told the Tribunal that he was not an accounts person; his duty had been to make sure that the description of transfers was accurate. The Respondent stated that he would not know if either the FIO or Mrs B made a mistake. Mrs B was experienced. The Respondent had assumed that the FIO was an accountant. He accepted that the figures in the FI Report were probably correct. The Respondent accepted that his position with regard to the FI Report had changed since he learned that the FIO was not qualified as an accountant as this could have had an impact on the Report. The Respondent noted that it was the Applicant's position that the Report was factual, but he could not accept that unreservedly as the FIO may have made a mistake or missed something out.

144. The Respondent told the Tribunal that his problems had developed from about 2007/8, when his mother had had a stroke. He had become involved with Mr AM and others from late 2007. The Respondent told the Tribunal about the individuals concerned and with which companies they were linked. He told the Tribunal that AT Ltd had been C's biggest clients by far, and represented something like 5% of their loan book; they were very highly regarded.

145. It was put to the Respondent that these clients had not been clients for a long time when he began to pay out on their behalf. The Respondent told the Tribunal it was something like a year or 18 months into the professional relationship. He told the Tribunal that the individuals involved ran a huge business, with about 150 trading locations and other properties, including a warehouse in Watford. They were involved in buying, selling and leasing properties. They used other solicitors for some matters but the Respondent came to deal with more and more. The Respondent told the Tribunal that he would be chased by several different people about the payments.

146. The Respondent was asked why the clients had chosen him and he told the Tribunal that it was because of his nature. He did not ask for money up front from clients. These particular clients had abused that and the Respondent told the Tribunal that he should perhaps have changed his normal practice for them. The Respondent had come under pressure from three different people asking him the same things and promising to pay. The Respondent told the Tribunal that he was no longer in touch

with the individuals and had last seen them about two years ago. The Respondent told the Tribunal that they had all been jailed for fraud, and he suggested that the individuals had known what they were doing. The Respondent told the Tribunal that he believed that God fixed everything; the individuals concerned were now in jail and he had been led to the email exchange with the FIO in August/September 2011.

147. The Respondent told the Tribunal that he stood by what he had admitted. Although he did not necessarily accept all of the figures in the FI Report he did not think that anything turned on the precise figures. The Respondent did not suggest that the ledgers were wrong but that there might be other ledgers which would give a different picture. The Respondent told the Tribunal that the Applicant had followed a certain path, which was not about fairness and was not the way they should behave. The Respondent confirmed that he accepted what was in the FI Report.

148. The Tribunal indicated that it would adjourn for an hour, or more if necessary, for the transcript to be reviewed. It was determined that Ms Taylor would be interposed, so that the Respondent could put further questions to her, in particular about the transcript.

Ms Taylor – 20 March 2014

149. Ms Taylor, having been released on 19 March, was re-sworn.

150. Ms Taylor told the Tribunal that she had no professional qualifications, e.g. as an accountant or solicitor. She had been employed by the Applicant for about 10 years, in which time she had carried out about 300 investigations. Ms Taylor told the Tribunal that she was familiar with and understood the SAR and the Code. Ms Taylor told the Tribunal that she did not consider her lack of qualification to be a barrier to carrying out her investigatory role. Her integrity had never previously been challenged. Ms Taylor told the Tribunal that before joining the Applicant she had worked in the Royal Navy for 12 years, in their special investigation branch (which was similar to the Military Police role in the army). In that role she had carried out investigations into fraud matters as well as being a sexual offences officer.

151. Ms Taylor told the Tribunal that the correct date for her Report was 21 January 2011 and she wanted to correct the incorrect date which appeared on the Report of 21 January 2010. Ms Taylor told the Tribunal that the Report was true to the best of her knowledge and belief. It summarised facts which were based on her investigation, including inspection of ledgers, and discussions with the Respondent.

152. Ms Taylor confirmed the email exchange set out at paragraph 139 above. At the time of preparing her Report in January 2011 she had listened to the recording of the interview and extracted the relevant parts to include into the Report, which was prepared quickly. Ms Taylor told the Tribunal that a full transcript had not been prepared by her or by the Applicant. The transcript referred to in these proceedings included the letters "FSI" in the footer and Ms Taylor suggested that this could mean it was a document from Finers, Stephens Innocent ("FSI"), the firm which the Applicant had instructed when the proceedings were issued. Ms Taylor thought the transcript might have been produced by that firm, in-house. She told the Tribunal that she had not seen the document until this week. Ms Taylor told the Tribunal that she

was not lying when she wrote her email on 23 September 2011 as she had not seen the transcript and did not know of its existence.

153. Ms Taylor told the Tribunal that she thought the Respondent had first challenged the quotes included in the FI Report in his witness statement of 28 January 2014. Ms Taylor denied that she had "sexed up" the Report, with a slant to support a prosecution. She told the Tribunal that her role was investigatory in nature. Ms Taylor told the Tribunal that she had heard the Respondent's evidence and there was nothing in the Report she wanted to correct in the light of his evidence. Ms Taylor told the Tribunal that she was happy that the Report accurately reflected the position she discovered at the Firm.

154. Under cross examination Ms Taylor told the Tribunal that she had GCSE and A levels. She had worked for the Office of the Immigration Commissioner and then began work for the Applicant in February 2004. Ms Taylor told the Tribunal that she had learned about the SAR and Code (and relevant professional conduct rules) at the various periods. Ms Taylor stated that she had taken the SRA Accounts Rules Course at the College of Law in about 2005. She reported to a manager, who reported to the head of the unit who reported to a Director and was employed by the Applicant.

155. The Respondent asked Ms Taylor how many of the investigations she had conducted involved BME/white solicitors. The Tribunal noted that this was not relevant to the issues which Ms Taylor had been recalled to address, which concerned her qualifications, the transcript, whether she had "sexed up" the Report and her integrity. The Respondent submitted that if there was bias, it should be noted. The Chair invited him to indicate and draw out where that bias might be in the Report.

156. Ms Taylor told the Tribunal that of the approximately 300 reports she had prepared about 150 had been used in connection with Tribunal proceedings. Ms Taylor told the Tribunal that her Report was factual, based on what she found at the Firm. Ms Taylor accepted that her Report would be of importance in Tribunal proceedings and that as it was factual it should note points, whether good or bad. Ms Taylor confirmed that the Respondent had co-operated during her investigation and that she had thanked him for being frank and honest. It was put to Ms Taylor that she should have mentioned that in her Report. Ms Taylor stated that there was no need to mention it, as it was evident in the Report.

157. The Respondent stated that the Report had led to the decision to intervene and that if the wrong language was used in a report it could lead to action which was not necessary. There was discussion about whether the Respondent was trying to challenge the decision to intervene in his Firm. The Respondent told the Tribunal that he was not challenging the intervention, but the Report had triggered all of the events which followed. The Respondent was asked to put to Ms Taylor what he said the deficiencies in the Report were.

158. It was put to Ms Taylor that the Respondent had paid £24,000 towards the shortfall in January 2011 and had subsequently paid another £50,000. Ms Taylor told the Tribunal that she did not know about this, as it was after her Report was prepared. Ms Taylor was referred to an email the Respondent sent to her on 31 January 2011 which referred to the Respondent borrowing money to correct the position in full.

Ms Taylor told the Tribunal that she could not recall the discussions about the Respondent making good the shortfall. Her Report had noted that there was a shortage on client account which meant that client money was at risk; others made the decision to intervene. Ms Taylor told the Tribunal that when her Report was prepared only £26,000 had been repaid by the Respondent when the minimum cash shortage was nearly £600,000.

159. The Respondent was encouraged to focus his questions on what he said the deficiencies in the Report were or any issues on which the Report was unreliable.

160. Ms Taylor was referred to paragraph 6 of the FI Report, which read, so far as relevant,

> "At the initial meeting [the Respondent] informed [the FIO] that he had "a couple of debit balances" on his client bank account"

and was asked if the words in quotation marks were reported verbatim. Ms Taylor told the Tribunal that this was what the Respondent had said, and it would be noted in her files. Ms Taylor stated that she took "a couple" to mean "two".

161. The Respondent referred to the transfers on the AB Ltd matter in May 2010, when a payment of £10,000 had been made on 21 May 2010, causing a debit balance of that amount. The Respondent told the Tribunal that he had told Ms Taylor, "I would never do that" but this had not appeared in the FI Report. Instead, the FI Report noted that the Respondent had stated he thought the ledger was in credit but later said he had not looked at the ledger. The Respondent told the Tribunal that he had not used the word "eventually", which appeared in the sentence, "[The Respondent] informed [the FIO] that he felt if he kept paying out for his clients they would eventually repay him". The Tribunal noted that this word did not appear in the transcript (in this context) and that the Respondent was concerned that it appeared that he was paying out in the vague hope that he would be paid by his clients. Ms Taylor stated that the Respondent had kept paying out for the four clients in question and hoped that they would pay. Ms Taylor told the Tribunal that she thought the Respondent had loaned £1 million and that he would be repaid if he kept paying out for his clients. Ms Taylor stated that all of the companies were linked. AT Ltd was in administration (from December 2009) but the loan could have been repaid by connected people.

162. The Respondent referred to his email of 30 August 2011 in which he had politely requested "any transcript"; there had initially been no response and then Ms Taylor had stated that she had only transcribed the relevant parts. Ms Taylor was asked who had instructed FSI to prepare the transcript. Ms Taylor told the Tribunal that she did not know; it was not her and in any event she had assumed it was prepared by FSI because of the letters at the bottom of the transcript. Ms Taylor stated that she had not met anyone from FSI (about this matter), only Mr Goodwin. Ms Taylor told the Tribunal that she had not asked anyone if the interview had been transcribed as she had nothing further to do with the matter after completing the Report.

163. In re-examination, Ms Taylor told the Tribunal that she had no knowledge of the further £50,000 payment by the Respondent towards the shortfall to which he had referred – see paragraph 158 – at the time she prepared her Report. Ms Taylor told

the Tribunal that she had had no further communications from the Respondent after the email of 31 January 2011 concerning replacement of the shortage.

164. Ms Taylor was asked questions by the Tribunal. She confirmed that she had spoken to the book keeper, Mrs B, during the investigation. Ms Taylor told the Tribunal that Mrs B had been reluctant to give information as she had worked for the Respondent for some time but had said that the green slips, concerning transfers of funds, would generally go to her from fee-earners. Ms Taylor told the Tribunal that there were not always transfer slips for the transactions covered in the Report. In the case of the transfers from the Mr D (deceased) matter Ms Taylor told the Tribunal that the inter ledger transfer was shown on the computer and could also be seen on the bank statements but there was not necessarily a piece of paper when the transfers were inter ledger. Such transfers were done by the book keeper. Ms Taylor told the Tribunal that whilst Mrs B had been open, she did not want to be a witness for the Applicant. Ms Taylor stated that she had taken and copied all of the relevant records she had found. Ms Taylor stated that she had not been in touch with FSI and was not aware of the transcript.

165. In response to further questions from the Tribunal Ms Taylor stated that she had only looked at the matters which featured in the Report in her discussions with Mrs B. Ms Taylor told the Tribunal that she did not recall an transfer slips concerning the transfer from Mr D's ledger and it had been her assumption that Mrs B would have been told the make the transfer. Ms Taylor told the Tribunal that the Firm's system would pick up when a client ledger was overdrawn and Mrs B would have a report; Mrs B had produced four ledgers showing the debit balances. Debit balances would also show on the Firm's bank reconciliations. Normally, a solicitor would sign the reconciliations but Ms Taylor could not recall if the Respondent had done so. Ms Taylor stated that the Respondent should have been aware of the debit balances as he was required to sign them off. Ms Taylor confirmed that she was not aware of the transcript until recently. She thought it may have been produced by FSI and noted that some of the spellings in the transcript were not correct; it was possible that FSI prepared the document without reference to the Applicant.

166. Ms Taylor told the Tribunal that she did not have the impression that Mrs B would have made the inter ledger transfers of her own motion, and this had not been raised by the Respondent as an explanation.

<u>The Respondent – continued</u>

167. The Respondent resumed giving evidence at about 2pm. It was noted that the Respondent included in his evidence the medical reports from Dr Rozewicz, his GP notes and the testimonials.

168. The Respondent told the Tribunal that it would have been useful to have a report from Dr S, but she was not available. Such a report would have provided more information about what had happened with the Respondent over the previous 5 to 10 years, but the Respondent did not have the benefit of a report from Dr S. The Respondent told the Tribunal that his GP notes were self-explanatory about his health issues, and should be taken into account. The testimonials were also said to be self-explanatory; the

Respondent told the Tribunal that he could have obtained more but had provided testimonials from a range of clients and other individuals.

169. The Respondent told the Tribunal that he had been on new medication for the last few weeks, one of the side effects of which was that he would lose his chain of thought; the Respondent handed up an information sheet on the medication.

170. Under cross examination the Respondent told the Tribunal that he first saw his GP about a psychiatric issue in early 2013, having been advised by a doctor treating his wife at a hospital that he needed to see someone. The Respondent was asked about his GP notes and what they showed, before late 2012/early 2013, about any psychiatric condition. It was noted that the earliest specific reference to stress or depression was on 10 December 2012. The Respondent told the Tribunal that he had not gone through the notes in detail.

Findings of Fact and Law

171. 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.

The Respondent's Submissions

172. A number of the Respondent's submissions were relevant to more than one of the allegations and so his submissions will be summarised here and referred to as necessary with regard to each allegation.

173. The Respondent reminded the Tribunal that the burden of proving the unadmitted allegations was on the Applicant, and that the allegations had to be proved beyond reasonable doubt. The Respondent submitted that each case was fact specific and everything about his case was unusual and exceptional.

174. The Respondent submitted that there had been no benefit to him in any of his actions and that his state mind was not as it should have been at the relevant time. If he had been dishonest as portrayed in these proceedings, the Applicant would have closed down his Firm immediately after the investigation, but instead it took about a month for them to do so. If he had been dishonest, much worse could have happened. The Applicant had allowed him to have his Practising Certificate back on 4 April 2011, shortly after he applied.

175. The Respondent submitted that these proceedings had taken three years, partly because of his health but also because of the way they had been dealt with, and this had been a lingering death for him. Lots of people were affected by the closure of the Respondent's Firm. The Respondent submitted that the Applicant had behaved unreasonably with regard to the intervention. It would be hard for the Respondent to have any standing if he were found to be dishonest.

176. The Respondent described himself as successful, sensible and cautious. He was happily married with four children. There was no reason for him to take huge risks in doing inappropriate things as there would be disaster if he paid out monies and was

not repaid. The Applicant had suggested that the Respondent had acted as he did because of the £1 million loan to AT Ltd. The Respondent submitted that the Applicant's case was built out of straw; the loan had died in December 2009 and only a few payments of interest had been made.

177. The Respondent submitted that he had had every incentive not to engage in misconduct, if he had been thinking correctly; he had not been thinking correctly, and relied on Dr Rozewicz's reports in that regard. There had been no gain for himself and, indeed, there had been massive losses. The Respondent submitted that no solicitor in his right frame of mind would do what he had done. The Respondent submitted that he had been stupidly naïve, linked to the events in his life (his mother's illness and death, the death of Mr Godman and over forty bereavements). The Respondent told the Tribunal that he had been left in a strange place mentally, with both good and bad thoughts, and was mentally and physically unwell. The Respondent told the Tribunal that he had had heart problems for some time but had not been treated, and then had had a cardiac arrest in November 2012. Due to his mental and physical ill health from about 2008 he had made catastrophic errors of judgement. The Respondent submitted that this would cast more than a reasonable doubt on his ability to form a dishonest intention; he had never been dishonest.

178. The Respondent submitted that in cross examination he had been asked about various receipts and payments about which he had not been asked previously and had given reasonable evidence on those points.

179. The Respondent submitted that the Applicant's case relied on Ms Taylor's Report. Ms Taylor had confirmed that he had co-operated with the investigation and had not given him any warnings about the possible consequences of the investigation or, for example, the meaning of the word "reckless" which had later been used against him.

180. The Respondent referred to his religious faith and trust in God.

181. The Respondent submitted that the FI Report contained no positive statements about his honesty and his willingness to fix the problem (of the debit balances on client account). That would have been relevant to the Applicant's decision to intervene into his Firm. As a public body, the Applicant had a duty to present all of the information fairly, frankly and honestly, with complete probity. The Respondent considered that the Report was biased, and was the justification the Applicant wanted to intervene; it had been "dressed up", and the Respondent submitted that his comments had been taken out of context.

182. The Respondent stated that he had accepted the Report because of who had produced it. All of his records and files had been taken within weeks of the Report, so he could not comment on it in detail and was placed at a disadvantage. The Respondent stated that his trust in the Applicant had been misplaced. It was worrying that someone unqualified could produce reports on which decisions to intervene were based. The Respondent made that remark for the benefit of others, who may not have been aware that reports could be produced by investigators who did not have relevant qualifications.

183. The Respondent stated that he believed he had been misled by Ms Taylor about the availability of a transcript; he should have been able to rely on a response from the Applicant and it was worrying if Ms Taylor did not know there was a transcript. The Respondent submitted that he had been given different explanations about the transcript before and after the lunch adjournment and he was unconvinced by the explanations.

184. The Respondent submitted that the FI Report was prepared for a particular purpose, to damn the subject of the Report. The Respondent submitted that his trust had been won over. There had been no discussion about the purpose of the interview and he had been bombarded with lots of questions. At that time, the necessary information was available in the office, but he was not asked for more information after the interview. The interview had covered a lot of matters and he could not answer every point. The Respondent submitted that he had not had the information he needed available during the interview of now, and he hoped his answers were plausible.

185. The Respondent submitted that he did not know the rules about disclosure in the Tribunal, and it would have been good to have the opportunity to request documents from the Applicant. It had been suggested, for example, that there were no green transfer slips concerning the transfers from the Mr D (deceased) ledger, but the Respondent was almost convinced that there were, many of which were produced by Mrs B, the book keeper. When so much was at stake for the Respondent, access to the documents was critical. The Respondent submitted that the Applicant had not behaved very well; for example, the intervention agents had written to the Respondent at the firm for which he was working in February 2013 about a claim, which had put the Respondent in difficulties with his employer.

186. The Respondent asked the Tribunal to take his track record into account. The reference from a director of C showed that there had been no problems prior to 2008. The references were from a range of people, including two former mayors.

187. The Respondent reiterated that his problems arose from his physical and mental ill health. He had co-operated with Ms Taylor during the investigation and had repaid over £76,000 towards the shortfall; it had been difficult to pay the rest when he was unable to obtain credit. A loan had been arranged, but instead the Applicant proceeded with an intervention. The Respondent told the Tribunal that he had co-operated with the intervention solicitors. The Applicant had published the intervention decision, stating it was on the grounds of "suspicion of dishonesty". The Respondent had held two Practising Certificates since that time, with conditions which he had volunteered. He was not a danger to the public. Whilst he had had difficulties, the Respondent submitted that he was now in a position to practice as a solicitor. The last three years of stress had taken their toll on him.

188. The Respondent submitted that the Applicant had not made out the allegation of dishonesty. The Respondent told the Tribunal that he held honesty close to his heart. His Firm had been renowned for its standards and he had not faced any complaints. The Respondent could understand why there could be a suspicion of dishonesty but when matters were examined, there was a good explanation for everything that had happened.

189. With regard to the allegation in the Rule 7 Statement, the Respondent accepted that he could have worded the emails better, but the client accepted the position at the time. The Respondent submitted that the Applicant relied on an old Defence document, which had later been amended and had no significance now.

190. Mr Goodwin stated that the Applicant did not accept the criticisms of Ms Taylor, the Applicant itself or their intervention solicitors. Mr Goodwin stated that he had hoped that the Respondent would withdraw the allegation of a lack of integrity he had made against Ms Taylor, who had given clear evidence on oath, but the Respondent had not done so. The key matters in the case were the facts stated in the FI Report.

The Tribunal's Findings – General

191. In considering the allegations, in particular the allegations of dishonesty, the Tribunal took into account all of the evidence presented, both written and oral, and the submissions of the parties, as set out extensively above.

192. The Tribunal made due allowances for the Respondent's known ill health and in particular had taken steps to ensure that he had the opportunity to take breaks if required. The Tribunal did not consider that the Respondent's presentation of his case had been prejudiced by his ill health; he appeared to be capable and coherent, and had argued his case vigorously despite his lack of experience in litigation. The Tribunal took into account that the Respondent's ill health had persisted for some time and that there had been some delay on the part of the Applicant in issuing the Rule 7 Statement/obtaining permission to issue it. The matter had been listed for hearing in October 2013 but could not proceed due to the Respondent's ill health at that time.

193. The Tribunal noted the Respondent's contention that he had not been able to obtain evidence from his treating psychologist, Dr S, and that he had only realised that he ought to do so during February of this year. The Tribunal noted that the Respondent had had legal representation as at March 2013. Whilst the Tribunal's directions in October 2013 had made provision for a report from a consultant psychiatrist, this had been aimed at addressing the question of whether or not the Respondent was able to take part in the proceedings. Dr Rozewicz's report dated 9 September 2013 referred to the Respondent becoming depressed after his mother had a stroke in 2007 but concentrated on the Respondent's difficulties in presenting his case. The Respondent referred in his first witness statement, dated 28 January 2014, to his mental and physical health difficulties by saying, amongst other points, that,

> "I do not think I was properly aware of the seriousness of my actions at the time." (First witness statement, paragraph 101).

The Respondent had expanded on his health difficulties in his second statement and in his oral evidence. The Tribunal noted all that the Respondent said on this issue. In essence, although the Respondent had gone into more detail, the Respondent's position was that his judgement had been impaired at the relevant times, such that he did not appreciate that what he was doing was wrong. The Tribunal considered this evidence and the Respondent's submissions on this point particularly with regard to the allegations of dishonesty. However, it was satisfied that the Respondent had been able to produce relevant psychiatric evidence from an appropriate consultant. Whilst

that evidence may not go as far as the Respondent thought the evidence of his treating psychologist would go, it was nevertheless cogent evidence which the Tribunal could take into account. The Tribunal did not consider that the Respondent was disadvantaged by the fact he had not obtained a report from Dr S.

194. The Tribunal wanted to make it clear that it had no other impression from the FI Report than that the Respondent had co-operated with the investigator. There had been no allegation that the Respondent had been uncooperative. The Tribunal accepted that the Respondent had been frank in his discussions with the investigator; there was no suggestion at all that he had tried to deceive her or hide information.

195. The Tribunal noted that the Respondent had raised a number of complaints and allegations against the Applicant and in particular against the FIO, Ms Taylor. The Tribunal did not consider that Ms Taylor's Report or investigation were deficient by reason of her lack of accountancy qualifications. The Respondent had had the opportunity to point out and to put to Ms Taylor any deficiencies in her Report; he had been unable to do so convincingly, beyond the general assertion that she may have missed something or may have got something wrong.

196. The Tribunal was satisfied that the FI Report was not unfair to the Respondent. The facts stated in it were supported by documents such as ledgers. The quotations which appeared in the Report were, necessarily, selective but they were accurate. The Tribunal had the opportunity to review the transcript as a whole and was satisfied that overall the quotations selected for the Report reflected what the Respondent had said during the interview.

197. The Tribunal noted that the Respondent had raised a complaint that the transcript had not been provided to him before the hearing. The Tribunal had allowed him time to review that document when it was produced and was satisfied that he had not been placed at any material disadvantage; the Respondent had had access to the full recording of the interview since 2011 and it was not clear in what way the transcript would have given the Respondent any further information than had been available to him in 2011. The Tribunal noted that the quotations in the Report had first been challenged or questioned in any way when the Respondent made his first statement at the end of January. There would have been no need for the transcript to be produced to the Respondent until that point, as it was understood that the FI Report was accepted. It was only necessary for the Tribunal to see it in the event because the Respondent wanted to make the point that some of his remarks during the interview in January 2011 had been taken out of context.

198. The Tribunal noted that in particular the Respondent disputed that he had used the word "eventually" in the context used in the FI Report, where it was stated at paragraph 23,

> "[The Respondent] informed [the FIO] that he felt if he kept paying out for his clients they would eventually repay him."

The Tribunal accepted that he had not used that word. It noted that, as set out at paragraphs 137 and 138 above, the Respondent's contention was that he had believed

he would be paid by his clients immediately, and that indeed some payments had been made to reduce the shortfall very soon after the payment out. The Tribunal noted that the FI Report did not attribute the word "eventually" to the Respondent, as it was not in quotation marks. Instead, the Tribunal took it that the FIO was expressing how she perceived the Respondent's position at the time. The Tribunal did not determine the case on the basis of the words the Respondent used when discussing the matter with the FIO but rather on the evidence of the payments and the explanation the Respondent offered to the Tribunal for what had happened.

199. The Tribunal noted that the Respondent had accused the FIO of being dishonest and lacking integrity in that, on 23 September 2011, she had said in an email that she had only transcribed the relevant parts of interview that were detailed in her Report – see paragraphs 139 to 140 above – when it now appeared that a transcript existed from about June 2011. The Tribunal did not find that Ms Taylor had been untruthful; her evidence to the Tribunal was that she was unaware that anyone else had prepared a transcript, and no transcript had been prepared on her instructions. The Tribunal accepted this. From the limited information available at hearing it appeared possible that the transcript had been prepared on their own initiative by the solicitors originally instructed by the Applicant in connection with their case preparation. They had ceased to act during the progress of the case. There was no reason why Ms Taylor should have been aware of their actions. It might have been possible for Ms Taylor to make some enquiries to satisfy herself whether anyone had prepared a transcript. As noted above, however, the Tribunal did not consider that anything turned on the existence or otherwise of the transcript as the Respondent had had ample time to listen to the recording and prepare his own notes. The Tribunal noted that in that regard the Respondent had told the Tribunal that because he had been unwell he had not listened to the recording in full; it was not clear that the transcript would have been of great assistance to him for the period in which he said he was unable to prepare his case.

200. The Tribunal found that the FI Report was not unfair. The two factual errors – the date which appeared on the face of the Report, and the exact amount of the shortfall – had been corrected. Whilst the Respondent may not have appreciated the role of the FIO in carrying out the investigation and preparing a report any such misunderstanding was not fundamental. The FIO had not made the decision to intervene into the Respondent's Firm but had produced a largely factual Report into payments made by and on behalf of four particular clients, which had led to a very large shortfall on client account – almost £600,000 as at 31 December 2010. In the light of such a large shortfall the Applicant's decision to intervene would not appear surprising to members of the profession; it appeared to the Tribunal unlikely that any statements in the Report about the Respondent's co-operation with the investigation or his expressed willingness to repay the shortfall would have made any significant difference. In any event, of course, the Tribunal was not the right forum to challenge an intervention decision; the Tribunal was not determining that the intervention was necessary, simply that the findings in the Report – which were largely unchallenged by the Respondent – would appear on their face to give significant cause for concern about the security of clients' money.

201. **Allegation 1.1 - That he withdrew monies from client account in respect of four clients that exceeded the funds held for those clients, in breach of Rule 22(5) Solicitors Account Rules 1998 ("SAR"), giving rise a shortage on client account. It was further alleged that the Respondent behaved dishonestly in respect of this allegation or that he was grossly reckless in his stewardship of client funds.**

201.1 The basic allegation was admitted by the Respondent, but he denied dishonesty.

201.2 The factual matters underlying this allegation are set out at paragraphs 10 to 35 above. The four clients in respect of which the Respondent had withdrawn monies from client account in excess of funds held for those clients were AT Ltd, AB Ltd, LIUK Ltd and Mr RC. The Tribunal noted that the Respondent had given evidence that these four clients were linked in various ways.

201.3 The Tribunal was satisfied that it was proved beyond reasonable doubt on the basis of the FI Report and the Respondent's own evidence that there had existed a minimum cash shortage of £594,873.57 as at 31 December 2010. This shortage was in itself a very serious matter. Money belonging to other clients had been used for the benefit of the four clients to an enormous extent. At the time of the inspection the debit balances were: £76,932.64 on the AT Ltd ledger; £355,018.80 on the AB Ltd ledger; £150,000 on the LIUK Ltd ledger; and £12,922.55 on the Mr RC ledger.

201.4 The Tribunal noted that the position had not been static; the amount of the cash shortage had varied since the first known shortage, which had been on the AT Ltd ledger on 4 November 2009. There had been short periods on some of the ledgers when there was a nil or credit balance.

201.5 There could be no doubt on the facts and the evidence that the allegation, which the Respondent had admitted, was proved to the highest standard.

201.6 The Tribunal considered the question of dishonesty and/or recklessness. In doing so, the Tribunal considered the substantial and high quality references provided for the Respondent, which showed that he had been well-regarded by clients and others. The Tribunal also took into account the Respondent's evidence and his explanations for what had happened. It also noted that the test to be applied when considering dishonesty was the combined test set out in Twinsectra v Yardley and others [2002] UKHL 12 ("the Twinsectra case").

201.7 The Tribunal was satisfied that the Respondent's practice had been properly run prior to his decision to take on as clients the four related clients referred to in this Judgment. It noted that in the testimonial provided by a director of C that this substantial client ceased to instruct the Respondent from 2008, when he began acting for one of their largest clients (AT Ltd) and there was the risk of a conflict of interest.

201.8 The Tribunal noted the history of transactions on each ledger.

201.9 On the AT Ltd ledger, the matter was opened in March 2008. The client account was in credit until 4 November 2008, although on two earlier dates the ledger showed a debit, which was in each case cleared on the same date. The debit on 4 November 2008 came about when a cheque for £260,000 was returned unpaid. After various

receipts and payments, the ledger returned to credit on 7 November 2008 but returned to debit on 10 November 2008. Again, after various payments, the account was in credit from 14 to 17 November when it returned to debit until 24 November 2008. There were various other periods of debit in each month from November 2008. The Tribunal noted, for example, that the ledger went into debit on 3 March 2009, when a cheque for £100,000 was dishonoured and did not return to credit until 10 March 2009. Substantial credits were made to the account during April 2009, followed by a period of debit from 21 April to 6 May 2009. The account was in debit by £479,417.35 as at 30 April 2009. It was clear that this account was persistently in debit, by quite significant amounts, usually linked to cheque payments from clients and others being dishonoured.

201.10 The AB Ltd ledger was similarly in debit frequently, from its inception in January 2010. Monies were sent out for the purposes of this client (or those linked to it) when there were insufficient funds. By the point the AB Ltd ledger was opened, AT Ltd was in administration. The Tribunal noted, by way of example, that as at 18 May 2010 there was a nil balance on the AB Ltd matter after a payment of £11,750 had been made to Clyde & Co LLP. On 21 May 2010 a client to office transfer took place for £10,000, which caused a debit balance of £10,000. The Respondent had told the FIO that the transfer had been a mistake, as he thought the account was in credit by £11,750 when he instructed the book keeper to make the transfer. The Tribunal noted that the Respondent had also told the FIO that he had not looked at the ledger. This was an inconsistency in his position, but was not determinative of any point.

201.11 In relation to the Mr RC account, the Tribunal again noted that debit balances were shown from 25 May 2010 onwards, although the amounts varied. The account had been credited with two payments of £10,000 each on 25 May 2010, via GA, giving a credit balance of £20,000. On the same day, the Respondent authorised the payment out of £66,322.55 to Mercedes Benz, which he told the Tribunal was linked to the resolution of a dispute about some leased cars. Three payments in of £10,000 each, via GA, had been made on each of 26, 27 and 28 May 2010. The account returned to credit on 3 June 2010, with the receipt of £60,000 from Mr RC but on the same day the Respondent authorised the payment out of £86,600 (stated to be for a deposit for an auction purchase), which led to a debit balance on the ledger of £69,922.55. The Respondent's evidence about the payment to Mercedes Benz was that Mr AM must have said that he would pay, and he had been told by Mr RC that the money was on its way. The Respondent had told the Tribunal that he had been out of the office, sitting in his car with Mr P, a financial adviser to Mr AM, when he (the Respondent) had telephoned the office to authorise the transfer to Mercedes. There had been a dispute about the amount to be paid; a figure had been agreed so that Mercedes did not repossess the cars. The Respondent told the Tribunal that he would have received instructions to make the payment on 25 May and after that would have sorted out the paperwork with Mercedes. It was clear to the Tribunal that the Respondent had not checked if there were sufficient funds available; had he done so, he would have known that there were insufficient funds to make the payment. He had simply relied on what his clients told him. Similarly, the payment out on 3 June 2010 was an example of the Respondent taking what his client, in this case Mr RC, told him without checking.

201.12 On the LIUK Ltd ledger, it was clear that the ledger had been in debit from shortly after its inception in November 2010 as a result of the Respondent making a series of payments out against a receipt of £200,375 which was dishonoured. The debit was reduced to £130,000 by a series of receipts via GA by 14 December 2010, but authorised a payment out of £20,000 on 15 December 2010 which increased the amount of the debit.

201.13 The Tribunal noted that the Applicant's case included the submission that the Respondent had made the payments out because he was asked to do so by his clients. The Respondent was under an obligation to adhere to the SAR, which was intended to protect clients' money. It was a matter of great concern if the Respondent acted on the basis of instructions which put him in breach of the SAR. The Applicant submitted that the Respondent knew that what he was doing was wrong or, at the least, that he was reckless.

201.14 The Tribunal noted that in the interview with the FIO in January 2011 the Respondent had agreed that he probably knew it was wrong to continue to make the payments and that he had been reckless. The Tribunal did not rely on this apparent admission, but found that the Respondent's conduct of his client account had been improper and chaotic over a prolonged period. He had, in effect, allowed four particular clients to have an overdraft at the expense and at the risk of his other clients. The Respondent had deliberately and improperly withdrawn funds from client account in respect of these four clients when he knew, or should have known, that there were insufficient funds to do so. He had allowed the improper conduct of his client account to continue from November 2009 until the inspection, a period of over a year.

201.15 There could be no doubt that the Respondent's conduct in persistently authorising payments from client account for four clients when he knew or should have known that there were insufficient funds held for those clients was dishonest by the standards of reasonable and honest people. The Respondent had allowed these four clients to have the benefit of money which belonged to other clients, without the knowledge or consent of those clients. Such conduct was clearly objectively dishonest.

201.16 The Tribunal considered whether the Respondent knew that by the standards of reasonable and honest people his conduct was dishonest. The Tribunal noted that the Respondent had contended that his mental health was such that at the relevant time – 2009/10 – he did not know that what he was doing was wrong. There was no evidence to support this contention. The first report from the consultant psychiatrist, Dr Rozewicz, dated 9 September 2013 referred to the Respondent becoming depressed after his mother had a stroke in 2007 and referred to current cognitive difficulties but did not comment on whether in 2009/10 the Respondent was impaired in such a way as to impact on his ability to know right from wrong. The more recent report stated that the Respondent had been depressed since 2008 and that, "This depression has had an impact on his ability to make appropriate decisions and professional judgements at that time. The depression has deteriorated since then." An impairment of his professional judgement was not the same as such a significant impairment that the Respondent would be unable to recognise that his behaviour was objectively dishonest. In any event, the Tribunal noted that there was no contemporaneous evidence, e.g. in the GP notes, to support the suggestion that the Respondent had been mentally ill from 2007/8 onwards. Although he had seen his

GP regularly in connection with cardiac and other problems, there was no mention of depression or stress in the records until December 2012. The Respondent had continued to run his Firm until the intervention. Although he had undoubtedly been operating under considerable pressure, in particular after the death of his business partner in 2009, the various testimonials suggested that despite the many stresses he experienced the Respondent had maintained high professional standards in conducting client matters and in his personal life. The only known area in which the Respondent's conduct had been below proper standards was in respect of the four linked clients. The Tribunal did not consider that this evidence went far enough to create a reasonable doubt about the Respondent's ability to understand that what he was doing – in using clients' money for the benefit of other clients – was dishonest by the standards of reasonable and honest people.

201.17 The Respondent's principal contention, and the one which he had consistently put forward in evidence and in the interview with the FIO, was that he had believed his clients would pay. He had believed his clients to be upstanding, respectable and wealthy and that they would keep their promises to pay monies into client account to avoid or make up any shortfall. The Tribunal accepted that he had believed his clients at the relevant times. There had been some support for this belief, in that his clients would generally make some payments towards the shortfalls in the periods immediately after they had been created albeit these payments were rarely enough to clear the debit balance completely. Initially, the debit balances arose when cheques were dishonoured. The Respondent had been given a false sense of security by the promises of his clients and the fact that some money would be paid in. The Tribunal concluded that the Respondent had been grossly and utterly reckless in relying on his clients. To do so on one occasion was deeply troubling; to persist in accepting their promises when his clients were in fact unreliable was clearly reckless.

201.18 However, the Tribunal had some doubt about whether it could properly be said that the Respondent knew at the relevant time that what he was doing was dishonest. He had been trusting when he should not have been, with extremely serious consequences. The Tribunal accepted that the Respondent had believed that what he was told and that all would be made right. Whilst this belief appeared unreasonable, the Tribunal could not be sure that the Respondent had known at the relevant times (throughout 2009 and 2010) that what he was doing was wrong. The Tribunal was satisfied that the Respondent had been reckless in his conduct of his client account in authorising payments out in excess of monies held but was not satisfied to the required standard that he had been dishonest. The Respondent had been overawed by clients who he perceived as being very wealthy and honourable members of the community. He had been naïve in the extreme in accepting their promises and assurances that he was being put in funds to carry out their instructions when such promises and assurances were at best only partially fulfilled.

202. **Allegation 1.2 - That he improperly utilised client monies for the purposes of other clients in breach of Rule 30 of SAR.**
It was further alleged that the Respondent behaved dishonestly in respect of this allegation or that he was grossly reckless in his stewardship of client funds.

202.1 This allegation was admitted by the Respondent, but he denied dishonesty.

202.2 The factual background to this allegation was as for allegation 1.1. The use of general client funds has been addressed above, and the findings in relation to allegation 1.1 can be read into the findings in relation to this allegation. When money was paid out for four particular clients in excess of the funds he held for those clients it was necessarily the case that the Respondent had used money belonging to other clients for the benefit of the four clients. The basic allegation was proved to the required standard on the facts and on the admission.

202.3 The Tribunal considered in relation to the allegation of dishonesty in particular the circumstances in which the Respondent had used monies from the ledgers of Mr D and Mr A deceased. All of the other transactions had involved the use of general client account and the transfer of monies between linked companies and individuals. The transfers from the ledgers of Mr D and Mr A appeared to be in a different category as money belonging to particular clients was used for the benefit of AT Ltd. Again, in considering the issue of dishonesty the Tribunal took into account the testimonials provided by the Respondent and the medical evidence he had produced.

202.4 The facts of the transfers were clear and undisputed. On 6 August 2009 £250,000 was transferred from a designated deposit account in the matter of Mr D deceased to the general client account and then to the ledger of AT Ltd. The Mr D ledger described the transfer as "short term loan". As a result of the transfer, the AT Ltd ledger showed a credit balance of £144,215.25 rather than a debit of over £105,000.

202.5 As at 15 October 2009 there was a debit balance on the AT Ltd ledger of £111,049.10. On 16 October 2009 £100,000 was transferred from a designated deposit account for Mr A deceased to the general client account and then to the ledger of AT Ltd. On the ledger of Mr A the transfer was described as "short term loan".

202.6 The sum of £100,000 was transferred back to the Mr A ledger on 5 November 2009, described on the Mr A ledger as "repayment short term loan." The Tribunal noted that the estate of Mr A had been fully administered by March 2010, with what appeared to be final payments to beneficiaries in mid February 2010.

202.7 On 9 December 2009 a further £42,000 was transferred from the ledger of Mr D deceased to AT Ltd; this was described on the Mr D ledger as "temporary loan". This was after AT Ltd had gone into administration which increased the risk that the money would not be repaid by AT Ltd.

202.8 On 24 February 2010 £70,000 was transferred from the AB Ltd ledger to the Mr D ledger, the transfer being described on the AB Ltd ledger as "refund loan". A further £215,085.73 was transferred from the AB Ltd ledger to the Mr D ledger on 15 March 2010, with the transfer again being described as "refund loan". The Tribunal noted that a final payment on the estate to a beneficiary was made on 22 March 2010.

202.9 The Tribunal noted that the unauthorised loan from the Mr A ledger was repaid within three weeks but the unauthorised loans from the Mr D ledger had not been repaid in full; approximately £7,000 had not been repaid. The Tribunal further noted that the greatest part of the unauthorised loans had been outstanding for approximately 7 months on the Mr D ledger; this ledger in particular had been short of funds.

202.10 The Tribunal found that, as the Respondent had admitted, there was no connection between Mr D or Mr A and AT Ltd or the related clients. The Tribunal considered carefully the evidence given by the Respondent about these transfers, between unrelated clients, had come about.

202.11 The Respondent had told the Tribunal that there would have been a reason for the transfers. He had told the Tribunal that if there was a shortfall the book keeper, Mrs B, may have said there was a need to transfer money from the deposit account to the general client account. The Respondent had denied that there had been any scheme to use Mr D's money for AT Ltd. Rather, he told the Tribunal that Mrs B had picked the Mr D file and that she would transfer money from a client account which was in credit to one which was in debit. The Respondent had told the Tribunal that he accepted this was not a proper procedure and that he had not stopped it; he would sign a whole bunch of transfers which Mrs B had prepared.

202.12 The Respondent had told the Tribunal in his evidence that he had not been dishonest and that he did not realise at the time that what he was doing was wrong. Again, he had told the Tribunal that he believed his clients would repay the money very soon, that he had been under a lot of pressure and was not in his right mind. The Tribunal noted that it was not necessary to find that the Respondent had any intention permanently to deprive clients of money, simply that there had been improper use of client money.

202.13 As noted above, the Tribunal was not satisfied that the Respondent's present ill health cast any reasonable doubt on his ability to tell right from wrong at the relevant time, or to appreciate whether what he was doing was dishonest. The Respondent had contended that no one in their right mind would do what he had done; sadly, the Tribunal often came across situations in which normally honest solicitors acted improperly without there being any medical explanation. The Tribunal accepted that the Respondent had been working under pressure, as many solicitors do. The Respondent now acknowledged that what he had done was wrong.

202.14 There was no doubt that the Respondent was responsible for the three transfers from the Mr D and Mr A ledgers, which took place over a period of about 4 months. He had told the Tribunal in his evidence that he did not deal with accounts day to day but that he was responsible for ensuring that transfers or entries on the ledger were correctly described.

202.15 The Tribunal accepted that the Respondent did not himself specifically target the accounts of Mr D and/or Mr A as he was probably unaware of the balances on the various probate files handled by the Firm; this was an area of work previously dealt with by his business partner, Mr Godman. However, he was responsible for authorising the transfers, and on his own evidence was responsible for how the transfers were described. The Respondent knew at the relevant time that money was being transferred from a designated deposit account to the general client account and then to an unconnected client, where there was no good reason to use money belonging to Mr D and Mr A for the benefit of AT Ltd. There was a degree of deliberation here which the Tribunal had not been satisfied existed in relation to the more general use of client funds. Indeed, there was a degree of planning in that the money had been refunded in time to pay out to the beneficiaries.

202.16 The Tribunal was satisfied that in transferring monies from the Mr D and Mr A ledgers for the benefit of AT Ltd the Respondent had acted dishonestly by the standards of reasonable and honest people. Further, the Tribunal was satisfied to the required standard that in making the transfers, which he knew were unauthorised loans at the relevant time, the Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people. His use of other client money was grossly reckless – for the reasons set out in relation to allegation 1.1 – but the Tribunal was not satisfied to the required standard that he had been dishonest in that regard. The Tribunal was, however, satisfied to the highest standard that the Respondent had been dishonest in relation to his use of money belonging to the Mr D and Mr A estates.

203. **Allegation 1.3 - That he permitted his client bank account to be utilised by clients and/or third parties to receive and pay out monies where there were no underlying legal transactions in breach of Rule 15(2) and Note (ix) to Rule 15 SAR**

203.1 This allegation was denied by the Respondent.

203.2 The Applicant's case was that there had been no underlying legal transactions for the various clients when the Respondent had been engaged in transferring significant sums in and out of his client account for those clients. The Tribunal was satisfied that it would be improper to allow the use of client account as a "banking facility" and that a solicitor's client account should only be used to receive and pay out money in connection with proper legal business for a client.

203.3 The Applicant relied in particular on the matters of LIUK Ltd and AB Ltd. The FIO had asked the Respondent if he had allowed his bank account to be used as a banking facility for LIUK Ltd as the FIO could not ascertain what legal work was being carried out. The Respondent appeared to admit that it was convenient for his clients to send money to him as it could buy them some extra time and at one point appeared to admit in the interview that he had provided a banking facility for LIUK Ltd but the Tribunal did not rely on those apparent admissions.

203.4 The Tribunal accepted that the FIO had not found on the client files any proper records of legal work done for LIUK Ltd. Indeed, the Respondent had admitted in his evidence that there were few, if any, records on the files. The Respondent had told the Tribunal that there would have been records in the form of emails, text messages and the like to which the FIO could have been given access if there had not been an intervention which would have illustrated the work he had been doing. The Tribunal was concerned that the Respondent had not taken any steps to produce documents or records prior to the intervention which would have supported his contention. However, the burden was on the Applicant to prove the allegation, not on the Respondent to disprove it.

203.5 The Respondent had given some explanation to the Tribunal about the work he had been doing for the various clients. For example, he had told the Tribunal that the payment to Mercedes Benz for Mr RC in May 2010 was to settle a dispute about car financing. He had told the Tribunal about various transactions in which clients and others had attempted to buy the assets of AT Ltd after it went into administration, and disputes with the Gambling Commission with which the Respondent had assisted although other solicitors had been instructed. The Respondent had explained that he

had attended meetings with the clients and their more specialist solicitors to help to ensure, for example, that the clients were not overcharged for legal work. In one matter he told the Tribunal that he had selected which leading counsel to instruct, although other solicitors were acting.

203.6 The Tribunal had heard that the Respondent had been carrying out general advisory work for his various clients. He had not opened individual files for each transaction so all of the matters had become somewhat mixed up. The Tribunal accepted this evidence, which was consistent with the Respondent's evidence about how busy he had been. It was less than satisfactory for a solicitor not to keep and/or be able to produce proper records about the work which had been done and so it was not surprising that this allegation had been brought. However, the Tribunal was not satisfied to the required standard that the Respondent had not been carrying out legal work for the clients and so could not be sure that he had allowed his client account to be used in the way alleged. This allegation, whilst properly brought, had not been proved to the required standard.

204. **Allegation 2.1 - Contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") he made representations in emails in relation to property transactions that were inaccurate, misleading and untrue. It was further alleged that the Respondent was dishonest in sending emails containing information about the property transactions that he knew to be untrue, but dishonesty was not an essential ingredient of the allegation.**

204.1 This allegation, including the allegation of dishonesty, was denied by the Respondent.

204.2 The factual background to this allegation is set out at paragraphs 36 to 56 above, and the Respondent's evidence at paragraphs 82 to 92 above.

204.3 The Respondent had confirmed that he had sent the emails which were alleged to be misleading, which are set out at paragraphs 39, 41, 42 and 47 in particular. The Respondent's evidence is noted in particular at paragraphs 82 to 92 above.

204.4 In short, it was the Applicant's case that in sending various emails to the M – and its various representatives – the Respondent had inaccurately and misleadingly stated that completion had been effected in the name of M, whereas in fact completion took place in the name of AT Ltd. There was no doubt that the three properties in question had never been registered in the name of M but had been registered in the name of AT Ltd. The Applicant further relied on the Respondent's apparent admission in a Defence and Counterclaim document in High Court proceedings brought by M against his Firm that he had sent the emails at the request of DS (of M) and that he complied with this requirement, "despite the fact that the same did not reflect the correct position."

204.5 The Tribunal noted that the Respondent had signed the Defence and Counterclaim, which contained a statement of truth. He told the Tribunal in his evidence that the Defence had been amended to make matters clearer. A solicitor should be sure of the truth and accuracy of any document which contains a statement of truth. However, the Respondent's position was that the Defence had not explained the position fully

rather than that he had signed an untrue document. It had not been alleged that he had been dishonest with regard to this document.

204.6 The Respondent's evidence to the Tribunal was that DS/M knew the true position at the relevant time and that DS could not have misread the emails as he knew what was going on. The Tribunal noted what the Respondent said about the trading relationship between DS and Mr AM, involving purchasing various properties, on some of which M provided all or part of the purchase monies. The Respondent told the Tribunal that M knew that the properties had been registered in the name of Mr AM or his companies. The Respondent told the Tribunal that the words, "… (in M Partnership LLP)" in the email of 7 July meant that M would be owners or beneficial owners. The Respondent had told the Tribunal that DS was arranging finance and wanted an email for his records as he was borrowing from others and that in various transactions M provided money and would acquire a beneficial interest whilst legal ownership went to AT Ltd.

204.7 The Respondent had told the Tribunal that the email of 7 July 2008 could have been expressed more clearly. He had referred to paragraph 70 of his first witness statement, which read:

> "Consequently, when at one point when it was agreed by the parties that the completion of these particular properties were going to be in the name of these particular companies, shortly before the actual completion dates, at [DS'] request, I issued conformations in the form specifically requested by him. Immediately prior to completion, however, in the case of these few particular properties the parties agreed the completion would take place in the name of an A Group company. All the parties knew the situation and so there was no need to retract any documents that had already been (correctly at the time) issued. The transactions were then completed as per the parties' instructions and request."

204.8 The Respondent had told the Tribunal that there had been no dishonesty as M asked for the email in this form. At the time, the Respondent thought what he had written was sufficient because he knew the context but he accepted he should have written more. The Respondent had agreed that he knew that the completions on 7 July 2008 had been in the name of AT Ltd, but that the beneficial ownership went to M. The Tribunal noted that the Respondent's position in relation to all three properties was substantially the same.

204.9 The Tribunal considered the context and the wording of the relevant emails carefully. If the Respondent had meant to state that M had acquired a beneficial interest in each property, the emails were poorly worded. At first reading, the emails appeared to mean that the transactions had completed in the name of M; this was not the case as completion in each case was in the name of AT Ltd. However, the Respondent had proffered another possible meaning to the effect that M had acquired a beneficial interest and that to those who were involved there would have been no misunderstanding.

204.10 It was for the Applicant to prove the allegation. It was a properly brought allegation, as it appeared from a normal reading of the emails and from the documents that the emails relied on were inaccurate, misleading and untrue. However, it was possible that the emails carried the alternative meaning, which would have been understood by those involved, to the effect that legal title had passed to AT Ltd but M would have a beneficial interest. The Tribunal therefore could not be sure that the allegation had been proved.

Previous Disciplinary Matters

205. There were no previous disciplinary matters in which findings had been made against the Respondent.

Mitigation

206. The Tribunal invited the Respondent to address it in particular with regard to any exceptional circumstances which the Tribunal ought to take into account.

207. The Respondent told the Tribunal that he was disappointed with the finding of dishonesty, which affected him profoundly and was in itself a severe punishment. The Respondent reiterated that he had had no benefit from what he had done. Dishonesty had been found in relation to only one of the four allegations he had faced. He had not absconded with clients' money.

208. The Respondent told the Tribunal that he had not been represented in these proceedings due to his financial situation. He had previously been well-off, and had supported his family and friends. The Respondent told the Tribunal that he needed to get back on his feet and striking him off the Roll of Solicitors would not help. The Respondent submitted that he was not a danger to the public and was unlikely to reoffend. He had learned his lesson and would not run his own practice in future.

209. The Respondent told the Tribunal that he now had the support of his psychologist and psychiatrist and hoped to recover well. He told the Tribunal that he had done all he could to help during the investigation process; he accepted that as an officer of the court, he had a duty to do so. The Respondent apologised for falling below the high standards expected. He had had three years of facing stigma and these proceedings had been a cloud hanging over him; during this period, he had been in ill health.

210. The Respondent told the Tribunal that because of his bankruptcy he was in effect suspended from practice until October 2014. The Respondent expressed the hope that he would not be struck off; he would accept that he may have conditions on any Practising Certificate. It was submitted that striking him off the Roll would serve no useful purpose. The Respondent submitted that there were exceptional circumstances in his case.

Sanction

211. The Tribunal had regard to its Guidance Note on Sanctions (September 2013). It took into account what the Respondent had said in evidence and his submissions, in addition to the specific mitigation which he offered. It also took into account the

many strongly supportive testimonials which had been provided, and the evidence about the Respondent's ill health as well as the nature of the allegations which had been proved.

212. The Tribunal noted that in Bolton v The Law Society [1994] 1 WLR 512, it was stated by Bingham LJ that in relation to the purposes of sanction in the Tribunal included punishment, deprivation of the opportunity to offend further and,

> "… the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth … a member of the public … is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

213. Further, in relation to the management of client account it was stated in Weston v Law Society [1998] Times, 15th July,

> "….the tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed."

214. It was clear from the above that it would be appropriate to impose a severe sanction on the Respondent, even if there had been no finding of dishonesty. The Respondent's conduct of his client account had been improper and chaotic for a period of about 18 months. A minimum shortfall of nearly £600,000 existed as at 31 December 2010. These were extremely serious matters, which had put his clients' money at risk.

215. It was sad that after about 27 years in practice the Respondent had reached this position. His career had been successful until the events in question. The Respondent had clearly been well-regarded by clients and others. He had acted for four particular clients on whom he had relied, believing them to be pillars of the community, and had been let down by them. However, a solicitor should not use money belonging to other clients to support a particular client.

216. There had been a finding of dishonesty, in relation to the Respondent's transfers of money from the accounts of Mr D and Mr A and utilisation of that money for the benefit of an unrelated client. The Tribunal noted that in the case of SRA v Sharma [2010] EWHC 2022 (Admin) it was made clear, particularly at paragraph 13 of that judgment, that save in exceptional circumstances a finding of dishonesty would lead to an order for striking off, this being the normal and necessary penalty. The judgment went on to note that there would be a small residual category where striking off would be disproportionate. Relevant factors in considering whether there were exceptional circumstances included the nature, scope and extent of the dishonesty

itself, whether it was momentary or over a lengthy period of time, whether there was a benefit to the solicitor and whether there was an adverse effect on others.

217. The Tribunal did not find there were any exceptional circumstances. The dishonest acts had taken place over a period of about four months, and the improper transfers had not been substantially repaid for about seven months. Whilst there may have been no particular benefit to the Respondent, there had been a significant adverse effect on the estates of Mr D and Mr A, both of which were put at substantial risk; the beneficiaries could have lost most if not all of their inheritances. Further, the dishonest acts had taken place in the context of generally improper handling of client account which, whilst not found to be dishonest, was probably sufficiently serious to justify striking off in itself. The Tribunal was driven to the inevitable conclusion that the only appropriate and proportionate order was that the Respondent should be struck off the Roll of Solicitors.

Costs

218. Mr Goodwin applied for an order that the Respondent should pay the Applicant's costs of the proceedings. The Tribunal was told that the costs were agreed in the sum of £50,479.10; a schedule of costs in that amount was produced to the Tribunal.

219. Mr Goodwin submitted that although some of the allegations had not been proved to the criminal standard, the allegations had all been properly brought and should be allowed in full.

220. The Respondent told the Tribunal that he did no quibble with the amount of costs in the schedule. He commented that Mr Goodwin had behaved impeccably during the proceedings. The Respondent submitted that in the light of his bankruptcy, any order for costs should not be enforceable without the permission of the Tribunal.

221. The Tribunal was satisfied that the costs which had been agreed between the parties were reasonable and proportionate. Whilst the Applicant had not succeeded in proving all of the allegations those allegations had been properly brought. There was no reason to reduce the costs below the level agreed by the parties.

222. The Tribunal noted that the Respondent was currently bankrupt and determined that it was appropriate to order that the costs of £50,479.10 should not be enforced without the permission of the Tribunal.

Statement of Full Order

223. The Tribunal Ordered that the Respondent, RANBIR SINGH BAINS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £50,479.10, not to be enforced without the permission of the Tribunal.

DATED this 7th day of May 2014
On behalf of the Tribunal

D. Glass
Chairman