

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10975-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARC JOSEPH LEVY

Respondent

Before:

Ms A. E. Banks (in the chair)

Mr J. P. Davies

Mr R. Slack

Date of Hearing: 17 & 18 September 2014

Appearances

Mr David Barton, Solicitor Advocate of Flagstones, High Halden Road, Biddenden, Kent TN27 8JG for the Applicant.

The Respondent appeared and was represented by Mr Tom Allen, Counsel of 5 Paper Buildings, Temple, London EC4Y 7HB.

JUDGMENT

Allegations

The allegations against the Respondent, Marc Joseph Levy, were that:

1. Contained in a Rule 5 statement dated 18 April 2012:
 - 1.1 by his actions, he compromised or impaired or acted in a way which was likely to compromise or impair his independence or integrity, contrary to Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007 ("the Code");
 - 1.2 he failed to act in clients' best interests or to provide a good standard of service to his clients, contrary to Rules 1.04 and 1.05 of the Code;
 - 1.3 he acted in a position of conflict and permitted the interests of his purchaser clients to prevail over his duties to his lender clients, contrary to Rule 3 of the Code;
 - 1.4 he acted for the sellers, buyers and lenders in the same conveyancing transactions without first informing the lenders in writing contrary to Rule 3.18 of the Code;
 - 1.5 that he acted for the sellers and buyers in the same conveyancing transactions contrary to Rules 3.09 and 3.10 of the Code;
 - 1.6 he failed to exercise proper supervision of staff in breach of Rule 5.01 of the Code;
 - 1.7 he permitted his firm's client account to be used to provide banking facilities in breach of Rule 15 of the Solicitors Account Rules 1998 ("the 1998 Rules");
 - 1.8 he withdrew money from client account in breach of Rule 22 the 1998 Rules;
 - 1.9 he allowed client account to become overdrawn in breach of Rule 22(8) of the 1998 Rules;
 - 1.10 he improperly utilised clients' monies for the purposes of other clients in breach of Rule 30 of the 1998 Rules;
2. Contained in a Rule 7 statement dated 17 June 2013:
 - 2.1 in breach of Rule 6 of the Solicitors Accounts Rules 1998 and Rule 6.1 of the SRA Accounts Rules 2011 he failed to ensure compliance with the rules by principals and everyone else working in the practice;
 - 2.2 in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 and/or Principle 2 of the SRA Handbook 2011 and/or Rule 15 of the Solicitors Accounts Rules 1998 and/or Rule 14.2 of the SRA Accounts Rules 2011 he held office money in client account. In so doing the Respondent was dishonest although for the avoidance of doubt it is not necessary to establish dishonesty for this allegation to be proved;
 - 2.3 in breach of Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 and/or Rule 14.5 of the SRA Accounts Rules 2011 he provided banking facilities by permitting money to pass through client account when not connected with the conduct of an

underlying legal transaction. In so doing the Respondent was dishonest although for the avoidance of doubt it is not necessary to establish dishonesty for this allegation to be proved;

- 2.4 in breach of Rule 22 of the Solicitors Accounts Rules 1998 and/or Rule 21.1 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by either said Rule;
- 2.5 in breach of Rule 30(2) of the Solicitors Accounts Rules 1998 and/or Rule 27.2 of the SRA Accounts Rules 2011 he effected inter client loans without obtaining the prior written authority of both clients;
- 2.6 in breach of Principle 8 of the SRA Handbook 2011 he failed to effectively manage the firm in accordance with proper governance and financial management;
- 2.7 in breach of Rule 3.09 of the Solicitors Code of Conduct 2007 he acted for seller and buyer when he was not permitted to do so;
- 2.8 in breach of Rule 1.04 of the Solicitors Code of Conduct 2007 and/or Principle 5 of the SRA Handbook 2011 he failed to act in the best interests of clients.

Documents

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

Applicant:

- Application dated 18 April 2012;
- Rule 5 statement dated 18 April 2012, together with exhibit bundles JCM/1;
- Rule 7 statement dated 17 June 2013, together with exhibit bundle DEB/1;
- Civil Evidence Act Notices dated 23 April 2012 and 29 June 2012;
- Applicant's statement of costs dated 16 September 2014.

Respondent:

- Note of Russell-Cooke LLP dated 17 March 2014;
- First witness statement of the Respondent dated 7 August 2014, together with attachments;
- Second witness statement of the Respondent dated 16 September 2014, together with attachments;
- First witness statement of Mr Christopher Matthew Hall dated 6 August 2014;
- H L Law unaudited financial statements for the years 2009, 2010 and 2011;
- Cheshire Land Projects LLP accounts from 13 December 2012 to 31 December 2013;
- Bundle of personal testimonials relating to the Respondent;

Preliminary Matters

4. Mr Barton told the Tribunal that all of the allegations were accepted by the Respondent, with the exception of the allegation of dishonesty contained in allegations 2.2 and 2.3. The Note from Russell Cooke dated 17 March 2014 had asked that, in view of the Respondent's pleas, the allegations of dishonesty be adjourned generally not be proceeded with without the consent of the Tribunal. Upon the basis of his admissions it was accepted that the Respondent would be struck off by the Tribunal. Mr Barton said that this proposal was unacceptable to the Applicant. It was for the Tribunal to decide the matter but he expected that it would wish to adjudicate the question of dishonesty in the public interest.
5. Mr Allen asked that the Second Statement of the Respondent and the associated documentation, whilst served out of time, be allowed into evidence by the Tribunal. Mr Barton responded that the Applicant was neutral as to that application.
6. Mr Barton noted that the Respondent's former partner, Mr Hall, was not attending the hearing and that his evidence was served out of time. Mr Allen responded that Mr Hall was not to be called and there was no application to produce his evidence; it was not part of the Respondent's case.

The Tribunal's Decision on Preliminary Matters

7. The Tribunal would hear the matter and adjudicate upon the question of dishonesty since it was in the public interest that such a matter should come before the Tribunal for adjudication.
8. In light of what had been said by both advocates concerning Mr Hall's evidence, the Tribunal would disregard his statement.
9. In the interests of justice, the Second Statement of the Respondent, which dealt with his financial situation, would be allowed into evidence. The Tribunal noted that there was no statement of truth on the face of either of the Respondent's witness statements and that Mr Allen had said that matter would be dealt with in evidence.

Factual Background

10. The Respondent, who was born on 7 May 1974, was admitted as a solicitor on 1 March 2002. His name remains on the Roll of Solicitors.
11. At all material times, the Respondent carried on practice in partnership under the style of HL Law at 301, Hollyhedge Road, Gatley, Cheadle, Cheshire SK8 4HH.

The First Forensic Investigation

12. On 7 June 2010, an Investigation Officer ("the Investigation Officer") of the SRA attended HL Law ("the firm"), in order to commence an inspection of the firm's books of account and other documentation.
13. The Investigation Officer's Report was dated 24 August 2010.

Allegations 1.7 and 1.9
“BFS” and the Respondent’s father

14. The Respondent informed the Investigation Officer that an entity, BFS, provided bridging finance to a number of his clients and that the funds for bridging finance were held in the firm’s client account. The Respondent’s records included a client ledger account in the name BFS.
15. Companies House records for BFS showed the Respondent to have been the company secretary and “BL”, the Respondent’s father, to have been the sole director. BFS was struck off and dissolved in August 2009.
16. The Respondent subsequently provided the SRA with copies of Consumer Credit Act licences for BFS for the years 2003, 2006 and 2007.
17. It was noted that the BFS ledger account recorded receipt of £80,000 on 21 February 2008, with the narrative ‘Gatley LD’. The Respondent said that the funds were provided by his father to be used in “same day purchase and remortgage schemes”.
18. The Investigation Officer noted the following examples of payments made from the BFS ledger account:
 - a payment of £20,000 on 8 April 2008, to MJ Levy;
 - a payment of £4,000 on 2 May 2008, to BL;
 - a payment of £2,500 on 8 May 2008, recorded as cash;
 - a payment of £1,200 on 29 September 2008, to HL Law.
19. The Respondent indicated that the cash payments would have been made to his father.
20. Narrative entries to the BFS client ledger included references to bridging finance/bridging funds, and recorded payments to ‘gas certificates’; ‘gas repairs’, ‘Kelmare Gas’; ‘Electricity a/c’; ‘E-on’; and ‘Volkswagen Finance’.
21. The BFS client ledger was found to record periods during which the account was in debit, for example for the period 10 June 2008 to 9 September 2008. The Investigation Officer found that a payment of £2,500 on 10 June 2008 had been made to the entity “SH”. The Respondent informed the Investigation Officer that SH was operated by his father.
22. On 31 July 2008 the BFS client ledger was £18,671.78 in debit. The Investigation Officer noted that several payments had been made to ‘M. Levy’ and to ‘cash’.
23. The Respondent informed the Investigation Officer there had been no reason for him or his father to overdraw the BFS client account. He indicated that the debit balances may have arisen due to “deficits on other client ledgers” being transferred to the BFS client ledger. The Respondent failed to provide the Investigation Officer with further information to explain the overdrawn ledger account.

24. The Investigation Officer found that transfers made to the BFS client ledger from other client ledgers cleared the balances held on those ledgers and noted examples of such occurring on 24 October 2008 and 30 October 2008. The Respondent failed to provide the Investigation Officer with further information to explain these transfers.
25. The Investigation Officer found that the BFS ledger recorded transfers of amounts subsequently utilised as the “balance of funds required to complete” in a number of property purchases for other clients. It was noted that the balance of monies held on the BFS ledger immediately prior to such transfers was often of low or nil value, or overdrawn.
26. The Investigation Officer discovered that the recipients of these transfers (i.e. vendors’ solicitors) immediately returned the funds to the Respondent’s firm and, typically, that the returned monies were credited to the BFS ledger. The Investigation Officer exemplified this use of the BFS client ledger in four transactions.

Conveyancing Transactions

27. The Respondent informed the Investigation Officer that his firm acted in conveyancing transactions referred to as “property club transactions”. The Respondent explained that as part of the scheme, purchasers utilised a pooled account to provide purchase deposits.
28. The Investigation Officer selected thirty-nine client files for review. Six of the selected files could not be produced. The Investigation Officer summarized matters of concern arising in respect of his inspection of thirty-three client matter files.
29. The Investigation Officer’s report exemplified nine conveyancing transactions. In each of the nine transactions the Respondent’s firm was instructed to act for both the purchasers and for the lenders. Birmingham Midshires provided mortgage advances to the purchaser clients in five transactions. Bank of Scotland, Coventry Building Society, Bank of Ireland and Cheltenham and Gloucester Building Society provided advances in the remaining four transactions.
30. Each of the lenders subscribed to the provisions of the CML Lenders’ Handbook for England & Wales (‘CML Handbook’).

Allegations 1.1, 1.2, 1.3 and 1.4

Mr “SK” - purchase of a property in Fleetwood

31. The firm acted for Mr SK in his purchase of a property in Fleetwood. The matter was conducted by a trainee solicitor, under the supervision of the Respondent.
32. By letter dated 23 November 2009, the firm was instructed to act for the lender, Bank of Scotland.
33. The Investigation Officer noted that the vendor had owned the property for less than six months.

34. On 21 December 2009 Mr SK's client ledger recorded receipt of £10,000 as a result of a "client to client transfer" from the client ledger account of "EIF".
35. The EIF ledger showed £10,000 as having been received as a "client to client transfer". That transfer was found to have originated from the client ledger account of the Respondent's father.
36. On 21 December 2009, Mr SK's client ledger recorded a debit transfer of £10,000, shown as being in respect of "balance monies" paid to the vendor's solicitors.
37. The Investigation Officer noted that on 22 December 2009 the client ledger account in the name of the Respondent's father received the sum of £10,000, recorded as "balance due from [the vendor's solicitors]".
38. The client matter file did not contain a copy of the Certificate of Title.
39. The Investigation Officer found no evidence:
 - that the lender client had been advised that the vendor had owned the property for less than six months;
 - that the firm had disclosed relevant information to the lender client relating to the origin of the monies utilised to pay the balance of the purchase price;
 - that the lender client had been advised that monies equivalent to the balance of the purchase price had been returned by the vendor's solicitors to the Respondent's firm and credited to the account of the original provider of those funds.
40. During interview the Respondent informed the Investigation Officer:
 - that the length of ownership had been overlooked;
 - that he did not believe there was anything suspicious regarding the "deposit" so there was no need to inform the lender;
 - that if the £10,000 returned to the firm by the vendor's solicitors related to the £10,000 provided by his father, then the lender client "should have been informed".
41. The Respondent did not wish to comment when asked why the vendor's solicitors had paid £10,000 to his firm on the day following completion of Mr SK's transaction. He said that he did not know whether that amount of £10,000 related to the £10,000 provided by EIF / his father.
42. The Respondent informed the Investigation Officer that EIF provided "pooled funds" which could be used by investors in property purchases to provide the deposit, or the balance required to complete. He did not know why the funds had originated from his father, but indicated that various parties to the transaction were closely linked and that a Mr "J" (of EIF) and his father did business together.

43. The Respondent informed the Investigation Officer that he did not have copies of any loan agreement in respect of the £10,000 provided to Mr SK because that could put him in conflict with his lender client. The lender client was said to have no issue with EIF.

Allegations 1.1, 1.2, 1.3, 1.8, 1.9 and 1.10

Mr TO - purchase of a property in London

44. The Respondent had conduct of the purchase of the property in London by Mr TO.
45. By letter dated 14 January 2010, the firm was instructed to act for the lender, Godiva Mortgages (“Godiva”).
46. The Investigation Officer found that Godiva offered to provide a loan of £113,750 to facilitate the purchase of the property at a purchase price of £175,000.
47. A Certificate of Title dated 11 February 2010, signed by the Respondent, requested provision of a mortgage advance of £113,750.
48. Mr TO’s client ledger recorded receipt of £113,750 from Godiva on 11 February 2010.
49. The Investigation Officer found that a significant portion of the mortgage advance was not utilised for the intended purpose, noting the following transactions:
- on 12 February 2010, the sum of £24,448.10 was transferred from Mr TO’s client ledger to the BFS client ledger;
 - on 16 February 2010, the sum of £25,000 was transferred from Mr TO’s client ledger to the client ledger relating to a Mr “AM”.

Utilization of funds provided in respect of Mr TO’s purchase

50. The Investigation Officer noted that on 11 February 2010 the firm received £44,000 from the vendor’s solicitors. The amount was allocated to a client ledger in the name “R” Ltd. On the same day the amount of £124,448.10 was debited from the R Ltd client ledger and paid to “CF” Solicitors. This transfer created a debit balance of £80,448.10 on the R Ltd client ledger.
51. On 12 February 2010, the £24,448.10 which had that day been transferred from Mr TO’s client ledger to the BFS client ledger, was transferred to the R Ltd client ledger. On the same day, an amount of £56,000 was transferred from the client ledger of “USB” Limited to the R Ltd client ledger which cleared the debit balance.
52. On 17 February 2010, the client account relating to BFS recorded receipt of £24,448 from the vendor’s solicitors. On the same day the sum of £24,448 was transferred to the client account relating to Mr TO’s purchase.
53. The firm also acted for the vendor and purchaser (Mr “AM”) on the sale and purchase of property in Dewsbury.

54. The purchase price of £100,000 was facilitated by a mortgage advance of £75,000 from Cheltenham & Gloucester. The Investigation Officer noted that the sum of £25,000, which had been advanced to Mr TO for the purchase of the property in London was utilised to provide the balance required to complete Mr AM's purchase.
55. On 16 February 2010, the sum of £25,000 was transferred from the vendor's client ledger and credited to Mr TO's client ledger.
56. During interview the Respondent said he did not know the reason for the transfers shown on Mr TO's client ledger but accepted that the funds advanced by Godiva to Mr TO "should not have been used for another client matter".

Completion of Mr TO's Purchase

57. The client ledger relating to Mr TO's purchase recorded £113,750 as having been returned to Godiva on 18 February 2010.
58. The firm received return of the mortgage advance from Godiva on 24 February 2010, for completion of Mr TO's purchase later that day. On that same day Mr TO's client ledger recorded receipt of £42,964.75 as a "client to client transfer" from the client ledger account of BFS.
59. The Investigation officer noted that the BFS client ledger had received £42,964.75 from CF Solicitors on 24 February 2010.
60. During interview the Respondent accepted there was clearly a relationship between the funds provided by BFS to Mr TO and the funds received from CF Solicitors. The Respondent admitted that his lender client "should have been informed" of the nature of the provision and return of these funds.
61. When asked why the funds had been returned by CF Solicitors rather than the vendor's solicitors, the Respondent informed the Investigation Officer that it was part of the "JJ" scheme. The Respondent expressed the view that, in retrospect, the transactions looked obtuse. The Respondent indicated he was refusing to take instructions on such matters.
62. The Investigation Officer found no evidence:
 - that the firm had disclosed information to the lender client relating to the origin of monies utilised to pay the balance of the purchase price;
 - that the lender client had been advised that monies had been returned to the Respondent's firm and credited to the account of the provider of those funds;
63. The Investigation Officer considered that a possible explanation for the return of funds was that the vendor of the property in London had agreed to receive less than the actual purchase price and that the vendor's solicitors had returned surplus funds amounting to £42,964.75 to the Respondent's firm via CF Solicitors.

Allegations 1.1, 1.2, 1.3, 1.6, 1.8, 1.9 and 1.10
Mr "FF" - purchase of a property in Stoke-on-Trent

64. Documents found on file indicated that the Respondent and another member of the firm had conduct of the purchase of the property in Stoke-on-Trent on behalf of Mr FF. The vendor of the property was represented by the same firm of solicitors as in Mr TO's sale.
65. By letter dated 8 January 2010, the firm was instructed to act for the lender of the mortgage advance, Birmingham Midshires.
66. A Certificate of Title dated 24 February 2010, signed by the Respondent, requested provision of a mortgage advance of £60,000, against a purchase price of £80,000.
67. On 24 February 2010, the sum of £33,458.58 was debited from the client ledger relating to Mr FF's purchase. That transaction resulted in a debit balance on Mr FF's client ledger of £33,183.58.
68. The Investigation Officer noted that the £33,458.58 debited from Mr FF's ledger was credited to the BFS client ledger.
69. Mr FF's client ledger records receipt of £59,965 from Birmingham Midshires on 25 February 2010, placing the balance held on the account into credit by £26,781.42. On 25 February 2010, the sum of £20,079.97 was debited from the mortgage advance held on Mr FF's client and credited to the BFS client ledger.
70. The Investigation Officer noted that the money credited to the BFS client ledger, which had originated from Mr FF's ledger having been provided by Birmingham Midshires for Mr FF's property purchase, was transferred to two client ledgers (that of Mr "NA" and that of Mr "AW") to be utilised as balances required to complete the purchases of their properties.
71. The purchase by Mr NA was aborted. Mr AW's purchase completed on 25 February 2010 in a transaction in which the same firm of solicitors as in Mr TO's sale represented the vendor.
72. On 25 February 2010:
 - the BFS client ledger was credited with £20,079 received from the vendor's solicitors;
 - £20,079 was debited from the BFS client ledger and credited to the client ledger of Mr FF.
73. On 1 March 2010:
 - the BFS client ledger was credited with £33,458.58, received from the client ledger account of Mr NA;

- £33,458.58 was debited from the BFS client ledger and credited to the client ledger of Mr FF.
74. On 2 March 2010, Mr FF's client ledger recorded receipt of £20,000 as a "client to client transfer" from the client ledger account of BFS.
 75. The Investigation Officer noted that the balance of funds recorded on the BFS client ledger had, on 2 March 2010, been insufficient to enable the transfer of £20,000 to Mr FF.
 76. The firm acted for a Mr AB in the purchase transaction unrelated to the transaction concerning the property in Stoke-on-Trent. It was noted that as at 2 March 2010 sufficient funds were held in Mr AB's ledger account to complete his purchase. The Investigation Officer found that the £20,000 received into the BFS client ledger on 2 March 2010 had originated from the client ledger of Mr AB, transferred via the client ledger of the further unrelated matter of Mrs "MBA".
 77. The Investigation Officer formed the view that the vendor of the property, Mrs "D", had agreed to accept less than the agreed purchase price and that monies provided by the lender which were surplus to the amount actually required for the purchase, had been used, in part, as the balance required to complete by Mr FF.
 78. The Investigation Officer discovered an e-mail from the vendor's solicitors to the Respondent's firm informing "funds on way back to Marc".
 79. On 3 March 2010:
 - the BFS client ledger recorded receipt of £20,000 from the vendor's solicitors;
 - the BFS client ledger was debited by £20,000;
 - 20,000 was credited to the client ledger of Mr AB ;
 - Mr AB's property purchase completed.
 80. It was clear that the mortgage advance provided by the Respondent's client, Birmingham Midshires, in respect of Mr FF's purchase of the property in Stoke-on-Trent was utilised for purposes other than that for which it was intended.

Allegations 1.1, 1.2, 1.3, 1.6, 1.8 and 1.10

Mr "SG" - purchase of a property in Sutton-in-Ashfield

81. The Respondent and another member of the firm had conduct of the purchase of a property in Sutton-in-Ashfield by Mr SG. The vendor of the property was again represented by the same firm of solicitors that represented Mr TO and the others.
82. By letter dated 17 March 2010, the firm was instructed to act for the lender, Birmingham Midshires, who were to provide a mortgage advance.
83. A Certificate of Title dated 23 March 2010, signed by the Respondent's partner, Mr Hall, requested provision of a mortgage advance of £50,625, against a purchase price of £67,500.

84. The firm acted for Mr “EH” in the unrelated purchase of property in Hull, the purchase price of which was £69,995. As at 30 March 2010, Mr EH’s client ledger held sufficient monies to complete his purchase.
85. On 31 March 2010, BFS client ledger was £2,354.38 in debit prior to the following transactions:
- credit to the BFS client ledger from the client ledger of Mr EH (re Hull purchase) in the amount £16,910;
 - the client ledger for Mr SG was credited with £16,910, received from the BFS client account;
 - the sum of £16,910 was received by the firm from the vendor’s solicitors;
 - credit to the client ledger of Mr EH in the amount £16,910.
86. Mr EH’s transaction completed on 1 April 2010 following these transfers.
87. The Investigation Officer noted the content of an e-mail dated 18 March 2010, from Mr J to the other person dealing with the matter at the firm, relating to sale of the property in Sutton-in-Ashfield. Mr J, referred to the vendor of the property, having accepted a reduction in the purchase price from £67,500 to £45,169.25.
88. The file contained no indication that the lender client was informed of the amended purchase price.
89. It was clear that the mortgage advance provided by the Respondent’s client, Birmingham Midshires, in respect of Mr SG’s purchase was utilised for purposes other than that for which it was intended.

Mr Marc Levy - a property in Bolton
Transactions – 2002

90. The Respondent purchased the property in Bolton in September 2002 at a price of £27,000. He remortgaged the property on the day of purchase receiving a mortgage advance of £32,000. The same firm of solicitors that had acted for the vendors in the other matter acted for the Respondent in both the purchase and remortgage. The completion statement relating to the remortgage transaction indicated that the sum of £4,341.46 was to be paid to SH

Transaction – 2004

91. On 5 August 2004, NatWest wrote to BFS at the practice address of the Respondent’s firm. The letter referred to Mr M Levy as being the client of BFS. NatWest offered a loan of £51,800 (£51,575 net) in respect of the purchase of the property in Bolton, at a price of £65,000. The letter indicated that HL Law was to act for NatWest in the transaction.

Allegations 1.1, 1.2, 1.3, 1.4, 1.5The property in Bolton - sale and purchase transactions – 2008

92. On 1 September 2008, the firm was instructed by Bank of Ireland to act on its behalf in respect of a loan of £63,750 (net) for the purchase of the property in Bolton by Mrs AAE at a purchase price of £90,000.
93. The Investigation Officer noted the content of a letter dated 16 June 2010, from Mrs AAE to the Respondent, confirming she had purchased the property from the SH partnership on “12 September 2008 and that the deposit was paid privately between us”.
94. A Certificate of Title dated 9 September 2008, signed by Mr Hall, indicated a purchase price of £90,000.
95. On 12 September 2008, the Respondent’s client ledger for the sale recorded the receipt of the net mortgage advance £63,725. The Investigation Officer found that those funds were utilised to redeem the Respondent’s NatWest mortgage and to make other payments some of which were made in cash.
96. The Respondent informed the Investigation Officer that he had held the property on trust for SH and that the deposit had been deducted from amounts owed by SH to Mrs AAE.
97. The Respondent informed the Investigation Officer that his father operated SH and that payments from funds held on his client ledger had been made on his father’s instructions and were for the benefit of his father. He expressed the view it might have been preferable for the monies to have gone through office account and that the ledger should not have been in his name.
98. Land Registry documents record that Mrs AAE paid £90,000 for the property.
99. The Investigation Officer found no evidence that the lender had been informed:
 - that the firm was not in control over the payment of all of the purchase money;
 - of the nature of the transaction;
 - of the connection between the buyer and seller
100. The Respondent informed the Investigation Officer that he had no need to advise his lender client because he had full knowledge of the situation.
101. The Respondent acknowledged that payment authorities and authorities to act for buyer and seller were not on file.
102. The Respondent provided the Investigation Officer with a note in respect of the transaction and explained the connection between Mrs AAE and his father.

103. The Investigation Officer was unable to find evidence to the effect that the Respondent had satisfied the requirements set out in the Code in respect of the transaction and, in particular, he found no evidence that the firm had obtained written consent from the parties to continue to act in the transaction in these circumstances.

Allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6

A property in Liverpool

104. The Investigation Officer noted that the trainee solicitor had conduct of this matter.
105. By letter dated 9 March 2009, Cheltenham & Gloucester instructed the firm to act on behalf of the lender in the purchase of the property by Mr RH at a purchase price of £110,000.
106. A Certificate of Title dated 6 April 2009, in respect of the mortgage advance for Mr RH's purchase, was signed by the Respondent.
107. The Investigation Officer noted that the property had been purchased by "BI" Ltd on 8 April 2009, at a price of £74,000. A sales memorandum indicated the purchaser to be Mrs AA and that she was represented by the Respondent.
108. The property was sold to Mr RH in a back-to-back transaction on 8 April 2009 at a price of £110,000.
109. The completion statement relating to Mr RH's purchase recorded a purchase price of £74,000 and a balance due to him of £2,206.72. The statement also referred to a payment of £1,750 to the Respondent's father; a payment of £1,750 to 'Chris & Tony'; and a payment of a broker's fee of £500 to 'Sakia'.

Re Mr "IH"

110. On 7 April 2009, a client ledger in the name of Mr IH relating to the purchase of the property in Liverpool recorded receipt of the mortgage advance of £82,500 provided by Cheltenham & Gloucester in respect of Mr RH's purchase.
111. On 9 April 2009, the client ledger of Mr IH recorded:
- a payment of £1,750 to BFS in respect of broker fees;
 - a debit of £2,178.28 in respect of the firm's bill;
 - a payment of £1,750 to "AA" UK Ltd.;
 - a payment of £2,206.72 to Mr RH;
 - a payment of £500 to Ms "SA".
112. The Respondent accepted that the payment to Mr RH was unusual and that client authorities for payments to third parties and authorities to act for both buyer and lender should have been on file.

113. The Investigation Officer found no evidence that the lender client had been informed:
- that the firm had acted for both vendor and purchaser;
 - of the back-to-back transaction;
 - that the firm did not have control over the payment of all of the purchase money.
114. The Respondent acknowledged that his lender client should have been advised of these matters.

Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6
“IS” Ltd – a property in Hull

115. The matter was conducted under the supervision of the Respondent.
116. Land Registry records were found to show that the property had been purchased on 7 May 2008 by Mr “LL”, at a purchase price of £70,000.
117. By letter dated 21 November 2008 Birmingham Midshires instructed the firm to act in the purchase of the property by the “McVs” at a purchase price of £73,950.
118. A letter from the firm dated 20 December 2008, showed that the firm was also instructed in the purchase of the property by a Mr “WM”. The letter, which thanked Mr WM for his instructions, indicated the purchase price to be £58,125.
119. The Investigation Officer found that IS Ltd then contracted to purchase the property at £73,000 and immediately sold the property to McV at £90,000.
120. A Certificate of Title dated 5 January 2009, signed by the Respondent, requested a mortgage advance of £73,950 in respect of the McV purchase, against a stated purchase price of £90,000.
121. The client ledger of IS Ltd recorded the following transactions:
- on 5 January 2009, receipt of a mortgage advance from Birmingham Midshires of £73,915;
 - on 5 January 2009, payment of completion monies to the solicitors representing the vendor Mr LL, in the sum £73,000;
 - on 7 January 2009, transfer of £1,797.75 from client account to office account in payment of the firm’s bill;
 - on 12 March 2009, transfer of £915 from client account to the firm’s office account, the narrative to which records the transaction as “balance monies to HL Law”.
122. A letter from the firm dated 5 January 2009 to McV did not indicate there to be any charges in respect of disbursements, or the firm’s work on the conveyance. The documents showed that £73,915 had been paid to the vendor.
123. A letter and completion statement from the firm to IS Ltd, dated 5 January 2009, showed that £1,500 had been charged for general legal support (plus other charges).

The letter and completion statement indicated the amount of £73,000 as having been paid to the vendor.

124. The Investigation Officer found no evidence in support of the payment of £915 to the firm.
125. The Investigation Officer found no evidence that the lender client had been informed:
 - that the firm had acted for both vendor and purchaser;
 - of the back-to-back nature of the transaction;
 - that the firm did not have control over the payment of all of the purchase money.
126. The Investigation Officer was of the view there had been a connection between the buyer and seller, but found no evidence to indicate the lender client had been so informed.
127. There was no evidence of authority from any of the firm's clients for the firm to act for vendor and purchaser.

Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6

Mr "JHO" and Mr "AJO" - purchase of a another property in Hull

128. The Investigation Officer noted that the trainee solicitor had conduct of this matter under the supervision of the Respondent.
129. By letter dated 19 November 2008 Birmingham Midshires instructed the firm to act in the purchase of the property by Mr JHO and Mr AJO, at a purchase price of £76,000. . The sale memorandum indicated the vendors to be Mr & Mrs "AMcC" and IS Ltd as purchasers. The document showed IS Ltd as being represented by HL Law.
130. It appeared that Mr & Mrs AMcC sold the property to IS Ltd, at a price of £55,000. IS Ltd then immediately sold the property to Mr JHO and Mr AJO. A document dated 6 June 2009, signed by Mr JHO and Mr AJO confirmed the purchase price to have been £76,000.
131. The Investigation Officer was provided with a letter dated 20 November 2008, signed by Mr NB & Mr JHO, addressed to the Respondent, providing instructions to act for them in the sale and purchase of the property at £76,000. The letter confirmed that a deposit of £17,300 had been paid between the parties.
132. The firm's estimate of costs to Mr JHO indicated that costs would be calculated on a purchase price of £64,600.
133. A Certificate of Title dated 21 November 2008, signed by the Respondent, requested a mortgage advance of £58,650, in respect of Messrs JHO & AJO's purchase of the property, against a stated purchase price of £76,000.

134. The client ledger recorded the following transactions:
- on 27 November 2008 receipt of a mortgage advance from Birmingham Midshires of £58,615;
 - on 28 November 2008, payment of £55,000 to the vendor's solicitors;
 - on 28 November 2008, transfer of £1,870 from client to office account in respect of the firm's costs and disbursements;
 - on 5 December 2008, payment of £1,670 from client account, the narrative to which recorded "balance of monies to N & R [B]".
135. The Investigation Officer noted that the client ledger for Mr JHO did not record payment of the full purchase price paid to IS Ltd.
136. By letter dated 28 November 2008, the firm wrote to IS Ltd enclosing a completion statement. The letter indicated that £76,000 had been paid to the vendor and showed a charge of £1,500 for 'general legal support'.
137. By letter dated 28 November 2008, the firm wrote to Mr JHO enclosing a completion statement showing the mortgage advance of £58,615 in respect of a purchase price of £76,000. No charges were made in respect of costs or disbursements. The covering letter indicated that £58,615 had been paid to the vendor.
138. It appeared that the firm registered the conveyance at the Land Registry showing the purchase price to have been £64,600.
139. The Respondent wrote to the Land Registry indicating that the wrong Transfer had been registered. The error was said to have been made as a result of the amount of the mortgage advance being shown as the price paid. The letter requested the price paid to be amended to £76,000.
140. The client ledger account recorded the mortgage advance received from Birmingham Midshires to have been £58,615.
141. The Investigation Officer found no evidence that the lender client had been informed of the following material information:
- that the firm had acted for both vendor and purchaser;
 - of the back-to-back nature of the transaction;
 - that the vendor had owned the property for less than six months;
 - that a deposit had been paid directly between the parties.

Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6

Mr IM - purchase of another property in Hull

142. The Investigation Officer noted that the trainee solicitor had conduct of this matter under the supervision of the Respondent.
143. By letter dated 21 November 2008, Birmingham Midshires instructed the firm to act in the purchase of the property by Mr IM.

144. The vendor of the property, Mr “WC” sold the property to IS Ltd, at a price of £48,000. IS Ltd immediately sold the property to Mr IM at a price of £70,000.
145. The Investigation Officer was provided with a letter dated 1 December 2008, on the headed paper of IS Ltd., addressed to the Respondent, signed by Mr NB & Mr IM. The letter gave instructions in respect of their sale and purchase of the property at £70,000. The letter confirmed that a deposit of £10,500 had been paid between the parties.
146. A Certificate of Title dated 15 December 2008, signed by the Respondent, requested a mortgage advance of £59,500, in respect of Mr IM’s purchase of the property, against a stated purchase price of £70,000.
147. The client ledger relating to Mr IM’s purchase recorded the following transactions:
- on 15 December 2008, receipt of a mortgage advance from Birmingham Midshires of £59,465;
 - on 16 December 2008, payment of £48,436 to the vendor’s solicitors;
 - on 16 December 2008, transfer of £1,967.75 from client to office account in respect of the firm’s costs and disbursements;
 - on 14 January 2009, payment of £5,261.25 the narrative to which recorded “balance of monies to Mr LL”;
 - on 14 January 2009, payment of £3,750 the narrative to which recorded “balance of monies to IS Ltd”.
148. The Investigation Officer found no evidence that the lender client had been informed of the following material information:
- that the firm had acted for both vendor and purchaser;
 - of the back to back nature of the transaction;
 - that the vendor had owned the properties for less than six months;
 - that a deposit had been paid directly between the parties.
149. During interview with the Investigation Officer on 11th August 2010, the Respondent said that he hoped the firm had acted in the best interests of its lender clients, but “we could have done better”. He conceded there was “not enough information” on his client files to evidence that his lender clients had been advised of material facts. The Respondent acknowledged that as he “could not show otherwise”, he “had not” acted for his lender clients in accordance with the CML Handbook. The Respondent said that although he “thought that he had” followed the guidance contained in the SRA’s Warning Card - Property Fraud, because he “could not show otherwise” he “had not” followed the guidance.

Correspondence

150. The SRA wrote to the Respondent on 11 November 2010, enclosing a copy of the Investigation Officer’s report, requesting his explanation to matters raised in the report and requesting further information.

151. Russell Jones & Walker responded to the SRA on behalf of the Respondent, by letter dated 15 December 2010, enclosing a bundle of documents.
152. Russell Jones & Walker provided the SRA with a further bundle of documents by e-mail dated 11 February 2011.
153. On 18 July 2011, the SRA wrote to Russell Jones & Walker requesting further information.
154. Russell Jones & Walker responded by letter dated 22 September 2011, enclosing two bundles of documents.

The Second Forensic Investigation

155. On 7 March 2012 a different Investigation Officer (“the Officer”) of the SRA commenced an investigation of the Respondent’s books of account and other documents and her consequential report (“the report”) was dated 5 September 2012.
156. The report identified numerous and wide-ranging breaches of the Solicitors Accounts Rules 1998 and of the SRA Accounts Rules 2011. The lack of documentation and information available to the Officer made it impossible for her to compute the Respondent’s liabilities to clients as at the 31 May 2012 but she was able to calculate a minimum cash shortage as at that date of £2,748.72, which the Respondent rectified. Other significant sums of money had been withdrawn from client account, purportedly in respect of costs, that were impossible to verify.
157. The Respondent’s own accountants were unable to verify that the sum of £66,253.65 transferred from other client ledgers to the VAM 4 Costs ledger was properly due because of the lack of documentation.

Allegation 2.1

158. The report listed fifteen broad reasons why the Respondent’s books of account were not in compliance with either the 1998 or the 2011 Accounts Rules.
159. The Respondent accepted that he had failed to demonstrate proper governance of the books of account and stated that he wished he had done things differently.

Allegation 2.2

160. The Officer reviewed ledgers entitled “VAM 4 Costs 1039/12”, “Ground Rents 1400/2” and “S[B] 1085/1”.
161. The report identified the substantial number of credits and debits made to the VAM 4 ledger during the period 21 December 2010 to 7 November 2011.
162. The Officer asked for the matter file to establish the nature of the transactions. The Respondent said there was no matter file. He stated that the ledger had been used as a general joint ledger for the entity “SH” and VAM 4, and that SH was his father’s property business. He said that the monies that had been transferred to the ledger from

other client ledgers comprised profit costs to which the firm was entitled but which were to be held in “escrow” pending completion of transactions. The Respondent said that he had not transferred the profit costs to office account because it might have affected his overdraft facility. The amounts were substantial.

163. The Respondent acted for “W” Estates in connection with its purchase on the 24 June 2011 of one hundred and twenty-four properties in St Eval, Cornwall and its sale of one hundred and twelve of them on the same date to individual buyers. The firm under his supervision also acted for seventy-two of these individual buyers. A ledger titled “St Eval 1294/1” had, according to the Respondent, been used to deal with the bulk purchase and sales and the ledger detailed that between 1 April 2011 and 17 February 2012 the firm had transferred profit costs totalling £46,761.68 to the VAM 4 Costs, Ground Rents and the SB client ledgers.
164. An individual in the firm acted for seventy-two clients in respect of their purchase of properties from W Estates under the Respondent’s supervision. The Officer reviewed twenty-one matter files and that revealed transfers to other client ledgers. The Respondent explained that the transfers to VAM 4 Costs were in respect of the firm’s profit costs. The Officer exemplified four of the transactions and costs transfers were made to VAM 4 Costs.
165. The Ground Rents ledger was similarly analysed in relation to transactions conducted between 18 October 2011 and 11 November 2011 and the Respondent was asked to produce the matter file relating to it. He said that there was no such file.
166. The SB ledger was analysed to show payments and receipts during the period 28 September 2010 and 9 December 2011. A matter file was produced for the SB ledger but it did not contain the documentation to support the transactions identified on it and the Respondent was unable to explain.
167. In relation to each such ledger (VAM 4 Costs, Ground Rents and SB) the Respondent provided the Officer with a statement on the 21 March 2012. In that statement the Respondent accepted that each ledger had been used as a general ledger in which costs had been retained from office account and which provided banking facilities for him and others.
168. On the 29 June 2012 Respondent provided the Officer with a report from his accountants Clarke Nicklin. The summary of that report was that:
 - Between 18 October 2010 and 9 December 2011 profit costs totalling £168,849 had been transferred from approximately one hundred client ledger accounts to the three ledgers and were not accounted for through the office ledger;
 - Between the same period fee income not properly invoiced totalling £140,470 had passed through the ledgers, with VAT liability unbilled of £28,379.00;

- Between the same period client bank account had been used to provide banking facilities to the Respondent's father's business and to the Respondent personally;
 - Office expenditure totalling £10,550 had been paid out of client account. The Respondent confirmed he had made the payments. He had deposited £25,000 of his own money into client account to facilitate the making of personal payments.
169. On 11 July 2012 the Respondent said that he agreed Clarke Nicklin's report. He stated that instead of transferring profit costs due to the firm from individual client ledgers to office account he had transferred them to the three ledgers. He agreed that profit costs of £140,470 had not been recorded properly in the office ledger for each client, had not been invoiced properly, and that VAT attributable to such costs totalling £28,379 should have been declared on his VAT returns. He agreed that profit costs transferred to the three ledgers had on his instructions subsequently been spent through client account. He explained that he had not accounted for profit costs properly because he did not wish to pay the funds into his NatWest office bank account. He accepted this was wrong and that he had not dealt with VAT properly.
170. On 11 November 2011 the Respondent transferred £15,147 from a ledger in the name of "T" Projects to the Ground Rents ledger. This represented profit costs and was included in the analytical work performed by Clarke Nicklin. He did not disclose the withdrawn profit costs to his partner.
171. The Officer identified thirty-eight payments into client account made by using the firm's NatWest credit card facility. They were made during the period 28 July 2008 to 31 March 2012.
172. To assist cash flow the Respondent paid funds into client account using the card, gave instructions for the receipt to be posted to a client ledger, and had the money transferred to office account.

Allegation 2.3

173. Clarke Nicklin's report confirmed that the Respondent had provided banking facilities to both himself and third parties through client account and the Officer was able to identify further instances of this that were not detailed by the accountants.
174. Banking facilities were provided to SH, the property business owned by the Respondent's father and for which he did not act. The report identified the substantial payments and receipts passing through client account relating to SH. That company had its own bank account in his father's name but the company had experienced difficulties in obtaining credit facilities.
175. The Respondent made payments into client account totalling £25,000 from which he made personal payments that should not have been paid from client account.

176. The Officer identified five further instances where banking facilities were provided to third parties.
177. The Respondent acted for “VCL” on its sale of a block of flats in Smethwick. He confirmed that transactions from 17 May 2011, recorded in the ledger, did not relate to the sale of the property and should not have gone through his client account.
178. The Respondent provided the Officer with a bundle of documents relating to the sale of a property in Stoke-on-Trent. The property was sold for £175,000 and the ledger recorded the receipt of this sum from the buyers’ solicitors on 6 July 2010. Between that date and 18 February 2011, sixty-five payments totalling £195,791.69 were debited to the ledger. The Respondent confirmed that he had provided banking facilities to his client, Mr “NW”.
179. In relation to W Estates bulk purchase and sales of properties in Cornwall, the Respondent explained to the Officer that W Estates was created to deal specifically with this transaction.
180. The Officer reviewed three W Estates ledgers, two ledgers that were connected to W Estates because of inter client ledger transfers and twenty-three client ledger accounts relating to individual clients who had purchased properties from W Estates; these individuals were referred to as “end buyers”.
181. The first W Estates ledger exemplified was titled “St Eval 1294/1” and was said by the Respondent to record the financial dealings relating to the bulk purchase of one hundred and twenty-four properties, and the subsequent sales of one hundred and twelve of them, all on 24 June 2011. The lack of information on the matter file meant the Officer was unable to understand the transactions in the ledger. There was no client care letter and no information in respect of profit costs. There was no final completion statement. On 30 May 2012 the Respondent produced a document titled “Proposed Completion Statement”, the only document he produced.
182. The ledger revealed that profit costs totalling £46,761.68 had been transferred to the VAM 4 Costs, Ground Rents and SB client ledgers. The Respondent did not transfer this money to office account.
183. The second W Estates ledger examined by the Officer was titled “St Eval 1294/29”. It revealed that between 23 June 2011 and 30 November 2011 amounts totalling £970,847.86 had been transferred from other client ledger accounts to this ledger, that amounts totalling £526, 688.02 had been transferred from this ledger to other client ledgers, that on 14 July 2011 £179,000 was received from SB, and that five payments totalling £621,959.64 had been made from the ledger.
184. The Respondent was asked to produce the matter file to support the ledger account and he said that there was no such file. On 27 June 2012 the Respondent provided the Officer with an analysis of the ledger. No documentation was provided to enable the Officer to understand why the transfers had been effected through the firm’s client account. As an example, the Respondent could offer no explanation as to why the payment of £38,682 on the 30 November 2011 had been made.

185. The “B&E” ledgers detailed substantial movements of money between 24 June 2011 and 7 February 2012. The first such ledger recorded fifty-seven receipts totalling £1,025,630.00 from other client ledgers and transfers to other client ledger accounts totalling £515,369.50. It further recorded five receipts totalling £91,495.50 and thirteen payments totalling £601,755.70. The second ledger detailed other transactions and the volume of transactions detailed in the two ledgers led to the Officer asking the Respondent to provide the matter files. The Respondent informed her that there were no matter files and stated on 26 June 2012 that the first specified ledger was originally intended to be an escrow ledger for building works. The Officer asked the Respondent why he had received and made payments through client account for B&E, when it was not a client of the firm and he replied “We did not consider the issue, we have no problem referring to B&E as our client however we did not provide them with advice and we did not consider we were providing them legal services. This ledger is an extension of the work for W[] and relating clients”.
186. On 11 July the Respondent said that B&E was in fact a client of the firm, but no client care documents had ever been created.
187. The Respondent did not produce any documents to support the inter client transfers between W Estates and B&E. No documentation was provided to verify the receipts and payments other than that contained in the client bank statements. This rendered it impossible for the Officer to verify the basis upon which the transactions had taken place. £2,000 was paid from the ledger on 19 September 2011 to Santander Cards, and £15,000 was paid on 13 December 2011 to “G. Scott”.
188. The Officer examined the ledger titled BB 1443/1. She asked the Respondent to provide the matter file to support the ledger, and the Officer was informed that BB was a bridging finance company providing finance to the end buyers purchasing the W Estates properties. The Officer was unable to understand from the documentation provided by the Respondent what the transactions in the ledger related to. The Respondent stated that he would provide an analysis and on 11 July 2011 gave the Officer an analysis. Notwithstanding the provision of this analysis the Officer was unable to verify the transactions because the information contained in the folder was limited and the Respondent did not provide any supporting documentation. As at the date of the report he had not done so.
189. What the documentation did appear to reveal was that the managers of W Estates and B&E were purchasing shares in BB. The Respondent stated that the £1,000,000 transfer from W Estates 1294/1 client ledger to the BB ledger on 24 June 2011 was a funding line extended to BB from W Estates.
190. When asked by the Officer why the funding line had passed through the firm’s client account, he said that he had done this as the transactions were about to happen and that for transactional reasons he had deemed it unnecessary to send the funds to BB who would then send the funds back to the firm. There was no evidence BB was a client of the firm or that the movement of money was connected with a legal transaction being conducted by the firm.

191. The Respondent had the conduct of the payments made from client account in the name of T Projects and accepted that certain items noted in the report should not have been permitted. Apart from the profit costs payment, he offered no explanation for the others.

Allegation 2.4

192. The report identified widespread breaches of Rule 22 (1) of the 1998 Accounts Rules. In the report the Officer described the absence of signed internal authorities and consents from clients for the withdrawal of monies from client account. The Officer identified an almost complete absence of documentation to show that clients consented to withdrawals or inter ledger transfers.

Allegation 2.5

193. The Respondent effected inter client transfers in respect of loans between clients and to his firm. The Officer identified three client ledgers that detailed transfers to other client ledgers and payments to HL Law and SB. The Respondent said that the inter client transfers were in respect of loans between clients and that the payments to HL Law and SB were loans. No documentation was available to show that any loans had been authorised.

Allegation 2.6

194. The investigation commenced on 7 March 2012, and at the outset the Respondent said that the last partnership accounts that had been prepared were for the period ended 30 April 2008. He said that the firm's last VAT return was submitted to HM Revenue and Customs on 28 September 2011 for the period of 1 October 2009 to 31 December 2009 and that the firm's PAYE returns had been brought up to date during the investigation.
195. The Officer asked if prior to the preparation of draft accounts for the years 2009, 2010 and 2011, prepared at her request, the Respondent was in control of the firm's financial position and he said he thought he knew roughly where he was, although PAYE and VAT were both more than he thought.
196. The Officer observed that the property occupied by the firm as its offices was owned by the Respondent, and that were it not for the introduction of that asset during the investigation into the 2012 accounts the firm would have been insolvent.
197. The Officer was unable to review the current financial position of the firm because no management accounts were produced.

Allegation 2.7

198. The Respondent acted for W Estates in connection with its sale of properties to seventy-two end buyers for whom the firm also acted under the Respondent's supervision.

199. The Respondent admitted that some of the end buyers were not established clients and that he should not have acted for both sides in such circumstances.
200. The Respondent also acted in or supervised the purchase of two flats in the same development in Sheffield, where the firm acted for the same seller in each transaction as well as the buyers and the lenders. He accepted that he should not have acted for both seller and buyer.
201. The Respondent acted for seller and buyer in relation to the purchase and sale of a sports centre in Bradford. He acted for "G" Properties which simultaneously bought and sold the property to T Projects on the 24 October 2011. There was no written authority on the matter file giving consent to act for both parties.

Allegation 2.8

202. The Respondent said that at the time of entering into the agreement to purchase the properties from W Estates the end buyers also entered into a build contract. The contract required the end buyers to spend either £25,000 or £30,000 to bring each property up to a mortgageable standard. Bridging finance for the funding was provided by BB and the building contractor was B&E owned by the same individuals who managed W Estates. There therefore existed a conflict of interests between the buyer and seller clients. The Officer asked the Respondent if the firm's end buyer clients were aware of the connection between W Estates and B&E and he replied that he did not think it would have been relevant for them to have known.
203. The Respondent confirmed that he had not given end purchaser clients proper information as to costs. He did not make his clients aware that a file opening fee of £50, an engrossment fee of £90 and the profit costs on a bank transfer fee of £17.50 formed part of the firm's profit costs. He considered that the clients would have been aware because they were professional purchasers.
204. In addition, the Respondent charged end buyers a bank transfer fee of £30 plus VAT. The Officer noted that on the twenty-one end buyer transactions she inspected, funds were transferred internally to the W Estates connected ledgers thus incurring no bank transfer fee. The Respondent informed the Officer that he had not intended to make a secret profit, but the Officer's analysis showed that he did. He said that he would reimburse each client but at the date of the report the Officer had not received any confirmation that he had done so.
205. The Respondent supervised the purchase by Ms "M" of a property in Ormskirk on or about 21 April 2011. The firm also acted for the seller, Ms M's father. The Respondent supervised that transaction as well. The purchase was funded by the Halifax for whom the firm also acted in accordance with the requirements of the CML Handbook. The mortgage advance of £99,970 was credited to the buyer's ledger on 21 April 2011 and on the day of completion £97,292 was transferred to the seller's ledger. The gifted deposit provided by the buyer's father was disclosed to Halifax, and following completion of the transaction Mr M had a credit balance of £35,535.18. This was paid back to his daughter.

206. The Officer asked the Respondent if the Halifax had been informed that this sum had been returned to the purchaser on completion and it was apparent from his answer that he did not do so.
207. The Respondent acted in or supervised the purchase of the two properties in the same development in Sheffield, acting for seller, buyer and mortgagee. His instructions from the lender were to act in accordance with the CML Handbook.
208. The two buyers were purchasing from the same seller and had the same lender. In each case the buyers purported to borrow funds from "QFL" to fund the deposits. In each case money to fund the deposits was received from solicitors acting for QFL and was paid back to them after completion on instructions from the seller. The Respondent was asked if he had notified his lender clients and his answer was that they were probably not told.
209. Similar conduct had been identified by the other Forensic Investigation Officer in his report dated 24 August 2010. These transactions were conducted 3 months after his investigation.
210. The Respondent acted for the seller and buyer in the purchase and sale of the sports centre in Bradford. He also acted for the Co-operative Bank which advanced £500,000 towards a purchase price of £825,000.
211. The buyer purchased two title numbers and goodwill, buying each piece of land for £250,000. The seller purchased each piece for respectively £165,000 and £163,000, and the Respondent knew this because he had conducted the purchase. The buyer sold to T Projects with an uplift of £497,000 and the full purchase price had not passed through his client account. He was asked if he had notified his lender client of these facts. Whilst asserting he believed he had notified some such facts, he admitted that not all facts had been notified and could not provide any documentation to support his contention.
212. The purchase was completed on 24 October 2011 and at 26 July 2012 the Respondent had not registered the transactions at the Land Registry. He admitted this was a failure to act in the best interests of his clients.

Submissions on behalf of the Applicant

213. Mr Barton said that since all of the allegations in the Rule 5 Statement were admitted and the disputed allegations of dishonesty were in the Rule 7 Statement, he would make submissions primarily in relation to those allegations.
214. However, in his submission, even absent dishonesty, allegation 1.1 was extremely serious as the Respondent had accepted that he had compromised his integrity.
215. Allegation 1.7 stemmed from the initial forensic investigation and concerned the provision of banking facilities. Rather than that investigation bringing such conduct to an end it had carried on and had been repeated and extended. This supported the Applicant's contention that the Respondent's conduct was dishonest. He had known it

was wrong; the letter dated 15 December 2010 to the SRA from Russell Jones and Walker dealing with the first forensic investigation had made that clear:

“Mr Levy has also undertaken review of the firm’s involvement with his father’s company and for companies and firms which were familiar to him. The SRA will note that the firm no longer undertakes any work from the companies detailed in the SRA’s report, and therefore it is submitted that it is unlikely the errors of the kind detailed in the report will occur again”.

This was an example of the wholly disingenuous way in which the Respondent conducted himself throughout the proceedings. No explanation had been given to the SRA by the Respondent concerning the second forensic investigation and the only document that had been produced concerning it had been his first witness statement. The Respondent had been put on the clearest notice that his behaviour was wrong; indeed the Law Society had been emphasising the point for years but he had brazenly continued knowing or not caring that it was dishonest.

216. Why the Respondent’s conduct did not end after the first forensic investigation was difficult to know. Both allegations 2.2 and 2.3 demonstrated a wholesale disregard for proper procedures by the Respondent and in Mr Barton’s submission this was a disgraceful state of affairs. The Respondent had felt free to use his client account to provide banking facilities and as a safe haven where monies could be kept away from his bankers, his partner and HM Revenue and Customs (“HMRC”). A solicitor’s operation of a client account underpinned both an ethical approach to things and his integrity. This abuse had carried on for a significant period of time.
217. Mr Barton took the Tribunal to the evidence underlying allegations 2.2 and 2.3. The facts were accepted by the Respondent. The three client ledger accounts VAM 4 Costs, Ground Rents and SB had held monies that should have been in office account. It could be seen that the narratives in the VAM 4 Costs ledger did not give a clear description of the nature of the transactions and in Mr Barton’s submission someone unconnected with a ledger should be able to understand it, which was not the case here. That client account had patently been used as a bank facility, which also supported his submission that the money had been “tucked away”.
218. The accounts rules prevented mixing of monies and if costs on a matter became due then they had to be transferred to office account within 14 days. Whilst it was a breach to transgress this rule even inadvertently, this had been done deliberately and was a serious breach.
219. The second forensic investigation report recounted the explanation the Respondent had given as to why he had not transferred profit costs to office account; it was that he had not wanted to pay funds into the firm’s office bank account as he believed it would have affected the firm’s overdraft position. Mr Barton said that it also effected the calculation of profits, tax and VAT. In Mr Barton’s submission this was dishonest behaviour; it satisfied the objective test in Twinsectra Ltd v Yardley and Others [2002] UKHL and if it was done knowing or believing or not caring that it was dishonest then the subjective element of the test was also satisfied.

220. In his interview with the Officer on 11 July 2012 the Respondent had said that the three ledgers, Ground Rents, VAM 4 and SB “arose as a result of payments being made relating to a company S[H], and other personal matters...”. Yet any contention that the Respondent did not know that this was wrong was untrue, since he had known that from the first forensic investigation. Further, in Mr Barton’s submission accounting for profits in the way that the Respondent had done was not the way in which one partner should treat another.
221. In the Respondent’s statement dated 21 March 2012 it could be seen that the Respondent had said that he would no longer carry out these sorts of transactions; this was in effect a repeat of what he had instructed Russell Jones and Walker to say in their letter to the SRA. In Mr Barton’s submission this was disingenuous. The Respondent had known that what he was doing was wrong at that point and to repeat his behaviour on this scale was evidence of dishonesty. It was never sustainable to say that these were technical breaches; he had known at the latest by 15 December 2010 that this was inappropriate and ethically wrong conduct.
222. Mr Barton read extracts of the evidence to the Tribunal. Both the Clarke Nicklin report and the officer’s own investigation reflected that there was a lack of documentation and transaction detail on the three client ledgers.
223. There was a wide range of instances of the Respondent providing banking services with significant amounts of money and much of the Respondent’s behaviour clearly post-dated the first forensic investigation report. In his statement dated 21 March 2012 he accepted that client account should not be used for banking but should reflect the provision of legal services. In Mr Barton’s submission this was objectively dishonest behaviour under Twinsectra. Any solicitor would say that it was not permitted to provide banking facilities; there were money laundering issues and other risks involved in doing so. Due to the first forensic investigation, the Respondent was fixed with knowledge that this was wrong and he could not say that he did not know. In Mr Barton’s submission he did know or he did not care. He had not offered a scrap of explanation as could be seen from his first witness statement.
224. Mr Barton concluded by saying that the dishonesty allegation against the Respondent went beyond that suggested in his first witness statement, as being limited to dishonesty towards the bank, his partner and HMRC. It was fully particularised in the Rule 7 Statement. The allegation was not limited in this way but concerned whether he had been dishonest as a solicitor. It was an ethical issue and this was a misguided submission by the Respondent.

Witnesses

225. **Mr Gordon Hair** gave sworn oral evidence which can be summarised as follows:
- 225.1 Mr Hair said he had been an Investigation Officer with the SRA for ten years at the time he had made the first forensic investigation report, which was true to the best of his knowledge and belief. He confirmed that he and the Senior Investigation Officer had met the Respondent on 11 August 2010 and that the comments attributed to the Respondent in the report were made at that meeting. The main issues on the thirty-nine files examined by Mr Hair were summarised in the report. He had concluded that

the firm was providing banking facilities through BFS, which provided funds for property transactions. The Respondent had confirmed that the cash payments made from the ledger would have been made to his father.

225.2 Mr Hair referred to entries in the BFS client ledger. During August 2009 to April 2010 the BFS client ledger was used to provide the balance of funds required to complete on a number of property purchases. However the net impact on the ledger was often nil as the monies were immediately return to the firm, typically by the seller's solicitors and reallocated back to the BFS ledger.

225.3 Mr Hair was not cross-examined by Mr Allen.

226. **Ms Amie Woods** gave sworn oral evidence which can be summarised as follows:

226.1 Ms Woods said she had been employed as an investigation officer of the SRA for seven years and that the second forensic investigation had commenced on 7 March 2012. She confirmed that the consequent report was true to the best of her knowledge and belief. Her concerns were summarised in that report and it could be seen that the issues were complex; it had been difficult to follow transactions through the books of account. She noted the movement of monies through client account with no underlying legal transaction.

226.2 She had prepared a schedule of payments totalling £10,550 from client account that should have been made through office account and the Respondent had confirmed that he had made payments in respect of office expenditure from client account. He had also confirmed that he had credited the firm's client account with £25,000 on 31 October 2011 and had made personal payments from client account which had all been posted to the VAM 4 costs client ledger.

226.3 The client ledger account for VCL was one of several where it could be seen that transactions not relating to the sale of the property had gone through the firm's client account. One transaction concerned the purchase of a car. The Respondent had been asked to explain the payments and he had said that all those from 17 May 2011 onwards did not relate to the sale of the property and should not have gone through client account.

226.4 In questioning from the Tribunal Ms Wood said that the VAM 4 costs ledger and similar ledgers had been set up to collect fees due to the firm instead of transferring them to the firm's office account.

226.5 Ms Woods was not cross-examined by Mr Allen.

227. **The Respondent, Marc Joseph Levy**, gave sworn oral evidence which can be summarised as follows:

227.1 In examination-in-chief the Respondent said that he was now a trader in property together with Mr NW, operating as Cheshire Land Projects.

- 227.2 There had been no formal partnership agreement with Mr Hall, since the Respondent had conduct of more matters. The agreement had been that he would take one third of all gross fees, then his costs and then profits equally. On the HL Law profit and loss account from 1 May 2011 to 7 November 2012 it could be seen that he had taken a proportion of income by way of rent and had waived the one third share of all gross fees. It had suited him to do that and the amounts had been fully declared as income from property.
- 227.3 The VAM 4 Costs ledger had been set up as a collective item and contained profit costs from clients related to VAM 4. Whilst the Respondent accepted that it should not have been done in this way, these were costs to which the firm was entitled.
- 227.4 The system had begun when negotiations had been ongoing for personal and business facilities from NatWest bank. There had been no pressure from the bank and at no point had it been said that the bank wanted the full details of income or that the bank required a reduction in the overdraft. His actions in this regard had not been malicious. It was an overdraft he wanted to keep with the bank so long as business was sound. He had never made any misstatement to NatWest bank and, unusually, the bank had voted positively in his IVA.
- 227.5 He did not see what he had done as “deliberate ring fencing”; he had just wanted the firm to look as it should. The problem happened out of habit and was extraordinarily bad practice and very stupid. In fact all of the money was profit costs which had been specifically identified and invoiced. There had been no claims against the firm and no losses.
- 227.6 The Respondent accepted that the firm was liable for around £28,000 in VAT but due to cash flow and a change of accountants there had been no returns from December 2009. He agreed that it was a complete mess and he had not been able to stay on top of anything. He had not intended to mislead HMRC, the monies due were just not on his radar, but he had known that he was liable. It was his intention to make the VAT and tax payments but his work was very stressful at the time. All returns were now up to date and the VAT debt was in his IVA.
- 227.7 In regard to his personal taxation position he had not organised things just to avoid a relatively small liability. He had so many losses that his personal position was not affected by property income.
- 227.8 His partner Mr Hall had been asked repeatedly to become more involved in the firm; he was doing approximately one hour a day’s work. The Respondent said that he wished he’d had more support; he had had to do everything in the firm. The matter had not been discussed with Mr Hall but he had not had to mislead him about profit costs as he could not have cared less; he was not involved. In any event it was not his intention to mislead him.
- 227.9 There was no dispute that he had provided banking facilities to SH and that had become a terribly bad habit but there was nothing dishonest underlying it.

- 227.10 The Respondent said that the payment of £25,000 that he had made into the VAM 4 Costs client account and the subsequent personal payments out must have been an error on his part. This had been his personal money.
- 227.11 The Respondent agreed that the later payments on the VCL client account for the sale of the block of flats had nothing to do with that sale. He had made the payments because he had been asked to do so by important clients; they knew he had the money which they had needed quickly. He now knew that this was a massive issue.
- 227.12 In relation to the use of the client account relating to the sale of Mr NW's property in Stoke-on-Trent, the Respondent said that NW was a client who he'd known for 10 years and he had intimate knowledge of his business affairs. They had now become business partners. He had provided him with banking facilities but he knew that none of the payments were anything "dodgy". He had not stopped to think about what he was doing and it did not occur to him that it was wrong. He had derived no benefit out of the arrangement and he had not been dishonest.
- 227.13 He had made a huge mistake with the W Estates matter which had been a massive transaction. Acting for both sides was absurd and there had been a lot of problems. In 10 years, £110 million had passed through client account and there were no shortages; one claim had been resolved.
- 227.14 B&E were a building company involved in the W Estates contracts. The Respondent admitted that he had extended banking facilities to them as it had been important that monies were made available immediately to the completion. There was no advantage to this happening through client account apart from the immediacy. It had been agreed with the buyers that this would happen and no charge had been made. G. Scott was a works foreman and the payment of £15,000 had been made to him on the instructions of B&E. It had never occurred to the Respondent to ask why they could not pay this money themselves but he wanted to assist clients and expedite deals where possible.
- 227.15 The £1,000,000 transfer from W Estates to BB which could be seen on the client ledgers came about as it was felt unnecessary to send the monies out to come in again. This was a large and convoluted transaction with the loan documents prepared by external solicitors. The Respondent had received nothing from the arrangement, which had been undisciplined and chaotic.
- 227.16 The financial statements exhibited by the Applicant had been prepared by Clarke Nicklin and were draft accounts which had not been submitted to HMRC. The Respondent had now produced sets of accounts for 2009, 2010 and 2011 that were submitted in his IVA. In the draft accounts the office property had been introduced as a business asset with the firm paying mortgage interest but this had been hypothetical and ultimately the property had not been introduced. This change had had a huge effect on the profit figure for 2009 which had been £52,289 but became £6,983. The explanation was the same for the 2010 and 2011 accounts. There was a difference in the sales figures on the 2011 accounts which Clark Nicklin had said could be explained by trade debtors shown as £160,808 in the draft and £47,033 in the accounts now produced by the Respondent. This was either an error or the funds had come in, which seemed more likely as the fees had gone up.

- 227.17 In cross-examination Mr Barton asked the Respondent whether he was astute, as he appeared to have arranged his affairs so that his share of profit was paid out as rent, which could then be set off against losses. The Respondent agreed that he was astute. It was put to him that he was a good businessman, contrary to his assertions and he responded that he may be “cleverer than I thought”. He had supposed that the introduction of large sums, albeit followed by larger drawings reflected well on him and showed that he had liquidity. He had owned a large number of properties but because his credit was now bad his lenders penalised him and all of the properties would be repossessed when the interest rates went up; there were already possession orders on five of them. He was a director of several companies.
- 227.18 The Respondent said that despite being a property practitioner he had had no money laundering training and had not known when the regulations had commenced. However, he now knew about money laundering. Despite the assertion in Russell Jones and Walker’s letter that he would attend refresher courses it had not been done. The firm had failed in numerous regards. He had absolutely not misled the SRA in this regard; he was sorry he’d made a mess of the firm. It was put to him that he was willing to say whatever suited the moment and then to disregard it, however he absolutely denied this. He said that he was unable to explain the stresses he was under at the time and that he had always had the best of intentions.
- 227.19 Mr Barton asked him why it also said in the Russell Jones and Walker letter that “following the SRA’s visit Mr Levy has tightened the firm’s systems in relation to the recording of information, whether that be client authorities to act for buyer and seller or in relation to the inter-client transfers.” when this was not the case. The Respondent replied that he had failed, he had the best of intentions but circumstances had changed. It was put to him that by the time of that letter he knew that he was providing banking facilities and that was improper. He agreed. It was put to him that he had known even before that time as in 2002 he had opened a client and office account and would have needed to understand the Solicitors Accounts Rules 1998. He replied that he had known that both partners were responsible. He had known the distinction between client and office account, that he needed to keep the monies separate and to protect client money. Mr Barton put it to him that he had taken a conscious decision to mix those monies and that he had known it was wrong. The Respondent replied that it depended on what was on his radar at the time. The practice had evolved over time and he had made the decision to create the VAM 4 client ledger. He was not at that stage considering whether it was client or office money. He had known it was wrong to keep office money in client account throughout the life of the ledger.
- 227.20 Once more referring to the Russell Jones and Walker letter Mr Barton said that the Respondent had known that payments should not be made from the firm’s client account with no underlying legal transaction. He had understood that that was not a proper use of client account. The Respondent agreed. He explained that the firm had acted for BFS and other entities and it was his habit to pay his father’s liabilities, he had known it was wrong ab initio.
- 227.21 The Respondent was asked whether his motive for keeping office monies in client account was to keep them away from the bank. He responded that he was painting an orderly picture to the bank and agreed that he was keeping office money out of office account.

- 227.22 He was asked about the £25,000 personal payment that he had credited to the VAM 4 client ledger on 31 October 2011 and the various personal payments that had subsequently been made from the ledger and whether they had post-dated the Russell Jones and Walker letter. He replied that he had not intended those payments to go out of client account and had no idea where the money had come from or why the payments out had been made. The payments on the VCL client ledger but did not relate to the sale of the flats were for clients he had trusted and he had not really been thinking about it. Mr Barton suggested that he had known these were payments he should not have been making. The Respondent said he had been thoughtless.
- 227.23 He was asked why the thirty-eight payments had been made into the firm's client account using the firm's company credit card. He replied that these payments were made to assist with cash flow into client account. Ultimately the transactions would have been transferred to the office account. It was put to him that this was not what he had said to the officer. The Respondent said that this would be shown in the ledgers.
- 227.24 The Respondent was taken to Mr NW's client ledger relating to his sale of the property in Stoke-on Trent and asked about the unrelated transactions upon the client ledger. He responded that he was shocked at the size of the ledger and he had already admitted that these payments should not have been made but he denied any dishonesty. He had been running an account for Mr NW who had given him instructions. It was put to him that Mr NW had his own bank account and he responded that it had not occurred to him and he would not have thought about that; Mr MW had come to him each time and asked and he had complied without giving any thought to whether it was right or wrong to do so, even though he had been through the first forensic investigation. He agreed that he had been a complete idiot and had admitted the allegation.
- 227.25 The Respondent agreed that profit costs on the W Estates matter had been transferred to other ledger accounts and had remained in client account; those monies had been spent a variety of ways. He said that whilst he knew that profit costs had to be moved out of client account, he did not know that they had to be moved across in 14 days. In fact there were a lot of things that he did not know. He went on to say that just because the bills were not on the files didn't mean that they had not been provided to the clients. There would always have been a completion statement and the officer would not necessarily have seen the bill on the file. When inter-ledger transfers were made there would be no bill and he agreed that he had given the instructions for that to be done but it was not a conscious decision to avoid protocol.
- 227.26 Mr Barton put it to the Respondent that there were a significant number of inter-ledger transfers and that the firm's costs would include VAT charged to the client. The Respondent had not accounted for VAT and he was now in an IVA. The fact that the monies had gone into the VAM 4 ledger had the consequence that he was not paying VAT to HMRC. The Respondent agreed that he had not paid the VAT but said that he had no intention of lying to HMRC. He had done his best to bring the records up-to-date and had now accounted for VAT; this was not a conscious decision not to pay the VAT. He had made the transfers to the VAM 4, Ground Rents and SB client ledgers out of habit.

- 227.27 Mr Barton asked him what had determined which ledger would receive which transfer, as he must have thought about it. The Respondent denied that he had given it thought and said it was never his intention that the monies should not go to office account. He was not quietly sitting at his desk thinking about these things. Mr Barton said that although he had said that he had had to introduce substantial sums to deal with a cash flow problem, there was £46,000 that he had not transferred to office account. The matter just did not square. The Respondent replied that it did if the negotiations with the bank were considered. It was put to him that he had thought it through and that he had been manipulative. The Respondent said that he could not explain the introduction of capital but it could be that suddenly monies were needed. He had had no reason to purposely keep monies away from the office account and had just been trying to keep the bank happy. He agreed that it was a mess but he had made admissions. He was a people pleaser who had succeeded in destroying his own life and his own interests. He had just been too helpful to clients but his actions had not been malicious and no client had been left out of pocket.
- 227.28 The Respondent was asked about the B&E transactions and whether B&E had been a client. He said this had been a misunderstanding, he had thought that if there was a ledger then they were a client. He had allowed receipts and payments for works to be made to B&E to help the parties out and had not thought about it. It was put to him that just over £1,000,000 had been transferred from other client ledger accounts to B&E's client ledger account in less than eight months and that this was a significant sum, the dates post-dated the Russell Jones and Walker letter when it had been said that he was taking training in the money-laundering provisions. He responded that the firm had fulfilled its money-laundering duties during the inspection and all the clients had been reputable. There was no reason for the other payments, unrelated to B&E, to have been made from the B&E's client ledger but he had agreed to it and he knew it was wrong.
- 227.29 He also agreed that personal payments made from the VAM 4 client ledger were wrong and that he had not considered whether there was money elsewhere to pay these bills. It was put to him that he had personally benefited from this arrangement and Mr Barton suggested that that was how he organised things so that he had a pot of money to dip into at will. The Respondent said he did not accept this statement. He had been chaotic and reckless and had not been doing much thinking at the time.
- 227.30 It was put to the Respondent that he had provided banking facilities on the T Projects client ledger. The Respondent said at least one of the payments had been a loan and he accepted that to that extent banking facilities had been extended. Mr Barton pointed out that the officer had said that these payments didn't relate to the client and the Respondent said that this was not true and the officer must have been mistaken.
- 227.31 The Respondent apologised that he had not engaged in the disciplinary process. It was put to him that he had been contemptuous of his regulator and he responded that the SRA was no longer his regulator; he had made frank admissions and moved on.

Submissions on behalf of the Respondent

227.32 Mr Allen told the Tribunal that the Respondent had accepted that the allegations made in the Rule 5 and Rule 7 statements were made out in March 2014. He accepted the full factual basis behind the allegations. The element that was disputed was that of dishonesty.

227.33 The particulars of that allegation needed to be set out in writing so that the Respondent knew the allegation he had to meet; the particulars relating to dishonesty in allegations 2.2 and 2.3 were at paragraphs 8 to 44 of the Rule 7 statement.

227.34 In respect of allegation 2.2, paragraph 20 of the Rule 7 statement particularised the allegation of dishonesty.

227.35 The Respondent's first witness statement answered those particulars and also dealt with allegation 2.3. The Respondent had said that he was aware of other firms of solicitors where the bank had unilaterally lowered an overdraft limit without prior notice. He had taken a conscious decision to put monies in client account rather than office account but he denied that his actions were dishonest as against the bank. This had been a mechanism to continue to function with the same overdraft agreement. This had been developed in the Respondent's evidence; he was ensuring the continuation of a service to clients.

227.36 With regard to VAT there was no suggestion that incorrect VAT returns were made to HMRC. The last VAT return had been made for December 2009 but everything had now been regularised as the Tribunal could see from the Respondent's second witness statement. The VAT returns were up to date for the purposes of the partners' IVA arrangements. It was acknowledged that there were losers because of the failure of the firm. HMRC was a significant creditor but there was a difference between a deliberate decision and incompetent business practice. The question was whether the Tribunal could be sure that what was going on was a dishonest attempt to avoid payment. The Respondent's evidence was that he had got into a complete mess with his VAT and HMRC returns, they had gone off his radar and the matter had "rolled". In Mr Allen's submission what had occurred was an abject failure to deal with the matter; it might be grossly negligent but it was not dishonest.

227.37 There was now no evidence before the Tribunal from the Respondent's erstwhile partner Mr Hall, except what he had to say in his interview with the officers on 11 July 2012. In that interview Mr Hall had said that he was not aware that £140,470 of profit costs had been accounted for through client account. However, he said he was perplexed by what he was being told and would need to speak to the Respondent. When asked whether he thought the Respondent had been dishonest with him in respect of profit costs he replied "Well I wouldn't have said so but I think that raises the question obviously." The Tribunal had heard that there was a disparity between the partners and they had adopted different roles. The question the Tribunal must ask itself was could it be sure that the Respondent had realised he was being dishonest towards Mr Hall. In Mr Allen's submission there was an absence of evidence to enable the Tribunal to reach an adverse decision concerning dishonesty in this respect.

- 227.38 The allegation of dishonesty in allegation 2.3 did not have the same specificity. In this case it had been pleaded as a factual matrix from which a conclusion of dishonesty could be drawn.
- 227.39 Mr Allen said that dishonesty was the most serious allegation and went far beyond regulatory breaches and was neither negligence nor incompetence. He referred to the dual test in Twinsectra and the subjective limb - whether the Respondent himself realised that what he did was dishonest by the standards of reasonable and honest solicitors. If he may have thought otherwise then the Tribunal should find the allegation not proved. In Mr Allen's submission, the Tribunal should ask itself whether the "chaotic universe" was a credible scenario. If it may be credible then the second limb was not satisfied. If the Respondent genuinely thought that individual clients were not losers in the matter, then the Tribunal should ask itself whether he thought that his standards were those of a reasonable and honest solicitor. There was no doubt that the Respondent had been grossly negligent and displayed rank incompetence, even a lack of integrity. The Applicant had put forward the proposition that the Respondent was astute but in Mr Allen's submission he was also demonstrably naive.
- 227.40 It had been said by Lord Hoffmann in Twinsectra that the subjective test was not satisfied by a finding that the Respondent had "buried his head in the sand". This was relevant to the factual matrix and all depended on whether the account given by the Respondent was something that may be right. The manner in which the Respondent had given evidence concerning Mr Hall had given him a certain credibility and could inform the Tribunal's decision. His evidence had been clear and honest and he had given an unmanufactured reaction. If the Respondent said that he now appreciated that his behaviour was wrong but at the time things were out of control, then the Tribunal should conclude that he thought he was being honest at the time of his actions.
- 227.41 Until all of this had started the Respondent had been of good character, as could be seen from the testimonials before the Tribunal which demonstrated that he was not a man who went about business in such a way that others thought him sharp and underhand. The evidence of the Respondent was what the case was all about. His inability to engage with the process earlier in the proceedings should not be held against him.
- 227.42 The Respondent was inexperienced in these proceedings. If the Tribunal found that it did not like the way in which the Respondent had given evidence then it was asked to take his inexperience into account and also that this had been a difficult and novel experience for him. The stakes were very high. He had accepted that his professional practice was not fit for purpose. In cross-examination he had admitted that he did hold office monies in client account and that profit costs should have been transferred to the office account. In his evidence he reiterated that he had given the instructions but the individual clients did not suffer a shortfall. However wrong his behaviour had been, it did not lead to deficits in relation to those clients.
- 227.43 There was no doubt after the first forensic investigation of the firm the Respondent should have been able to put its affairs in order; however he was never able to do so. In evidence the Tribunal had heard him say that it had genuinely been his intention.

At the time the Respondent had been dealing with regulatory failures but that did not assist the Tribunal with the issue of dishonesty. The Respondent could not deny that there was a pattern to his behaviour found in the first forensic investigation that continued and that this was an egregious failure. It could be however be explicable by chaos and his version of events may be accurate.

The Applicant's Response on Points of Law

227.44 In Mr Barton's submission, when deciding on the subjective element of dishonesty the decision in Bultitude v The Law Society [2004] EWCA Civ 1853 was authority for the proposition that a solicitor who neither knew nor cared was dishonest. At paragraph 36 of that case it was said by Lord Justice Kennedy that:

“So, as Mr Goodwin submitted in the Divisional Court, Mr Bultitude signed a cheque for £50,000 transferring his clients' funds to his office account without any supporting documentation and thus, it must be inferred, without knowing or caring whether his firm was entitled to be paid those funds. That, to my mind, satisfies both legs of the Twinsectra test, and the position is compounded by what happened thereafter. At some stage, as the Tribunal found, Mr Bultitude did become aware of the debit notes and once he saw those bogus documents, it must have been clear to him what had been done to clear the credit balances but he did nothing to backtrack. As the Tribunal found, he was guilty of conscious impropriety amounting to dishonesty in endorsing what had been done.”

227.45 It was not necessary to establish any intention to permanently deprive and a specific motive was not needed. If a solicitor buried his head in the sand then he did so deliberately; he could not set his own standards.

227.46 So far as particularisation in the Rule 7 was concerned, the SRA made the allegation and was then required to summarise it. In this case a wide variety of acts had been described.

227.47 In response, Mr Allen said that he did not agree with Mr Barton on this aspect of the law relating to dishonesty. In this regard, Twinsectra and Bultitude had to be read together. Mr Allen quoted from paragraphs 20 to 22 and 24 of Lord Hoffman's judgment in Twinsectra, which dealt with his original submission that burying one's head in the sand or taking a blinkered approach to one's professional duties as a solicitor did not amount to dishonesty.

Findings of Fact and Law

228. The burden was on the Applicant to prove each and every disputed allegation beyond reasonable doubt.

229. The Tribunal had due regard to the Respondent's right 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.

230 **The allegations against the Respondent, Marc Joseph Levy, were that:-**

231. **Allegation 1.1 - By his actions, he compromised or impaired or acted in a way which was likely to compromise or impair his independence or integrity, contrary to Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007 ("the Code");**

Allegation 1.2 - he failed to act in clients' best interests or to provide a good standard of service to his clients, contrary to Rules 1.04 and 1.05 of the Code;

Allegation 1.3 - he acted in a position of conflict and permitted the interests of his purchaser clients to prevail over his duties to his lender clients, contrary to Rule 3 of the Code;

Allegation 1.4 - he acted for the sellers, buyers and lenders in the same conveyancing transactions without first informing the lenders in writing contrary to Rule 3.18 of the Code;

Allegation 1.5 - he acted for the sellers and buyers in the same conveyancing transactions contrary to Rules 3.09 and 3.10 of the Code;

Allegation 1.6 - he failed to exercise proper supervision of staff in breach of Rule 5.01 of the Code;

Allegation 1.7 - he permitted his firm's client account to be used to provide banking facilities in breach of Rule 15 of the Solicitors Account Rules 1998 ("the 1998 Rules");

Allegation 1.8 - he withdrew money from client account in breach of Rule 22 the 1998 Rules;

Allegation 1.9 - he allowed client account to become overdrawn in breach of Rule 22(8) of the 1998 Rules;

Allegation 1.10 - that he improperly utilised clients' monies for the purposes of other clients in breach of Rule 30 of the 1998 Rules.

Allegation 2.1 - In breach of Rule 6 of the Solicitors Accounts Rules 1998 and Rule 6.1 of the SRA Accounts Rules 2011 he failed to ensure compliance with the rules by principals and everyone else working in the practice;

Allegation 2.2 - In breach of Rule 1.02 of the Solicitors Code of Conduct 2007 and/or Principle 2 of the SRA Handbook 2011 and/or Rule 15 of the Solicitors Accounts Rules 1998 and/or Rule 14.2 of the SRA Accounts Rules 2011 he held office money in client account.

Allegation 2.3 - In breach of Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 and/or Rule 14.5 of the SRA Accounts Rules 2011 he provided banking facilities by permitting money to pass through client account when not connected with the conduct of an underlying legal transaction.

Allegation 2.4 - In breach of Rule 22 of the Solicitors Accounts Rules 1998 and/or Rule 21.1 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by either said Rule;

Allegation 2.5 - In breach of Rule 30(2) of the Solicitors Accounts Rules 1998 and/or Rule 27.2 of the SRA Accounts Rules 2011 he effected inter client loans without obtaining the prior written authority of both clients;

Allegation 2.6 - In breach of Principal 8 of the SRA Handbook 2011 he failed to effectively manage the firm in accordance with proper governance and financial management;

Allegation 2.7 - In breach of Rule 3.09 of the Solicitors Code of Conduct 2007 he acted for seller and buyer when he was not permitted to do so;

Allegation 2.8 - In breach of Rule 1.04 of the Solicitors Code of Conduct 2007 and/or Principle 5 of the SRA Handbook 2011 he failed to act in the best interests of clients.

231.1 The Respondent accepted the factual basis of all of the allegations and admitted each of them.

231.2 The Tribunal found each one to have been proved beyond reasonable doubt on the facts and documents before it.

232. Allegations of dishonesty:

232.1 In relation to allegations 2.3 and 2.4 it was alleged that **in so doing the Respondent was dishonest.**

232.2 The Tribunal had listened most meticulously to each of the witnesses and in particular to the Respondent whilst he was giving his evidence. It had observed the manner in which he had done so and his demeanour throughout the proceedings. It had noted the submissions of both the Applicant and the Respondent upon the facts and the law and had considered all of the documentary evidence before it with great care.

232.3 The Tribunal was in no doubt that the test to be applied in this respect was that set down by Lord Hoffmann in Twinsectra; it must therefore ask itself two questions when deciding the issue of dishonesty:

- (i) whether the solicitor had acted dishonestly by the ordinary standards of reasonable and honest people; and
- ii) whether he was aware that by those standards he was acting dishonestly.

The standard of proof to be applied was the criminal one.

232.4 Mr Allen had submitted that, according to Twinsectra, “burying one’s head in the sand” was not enough to satisfy the subjective test. Mr Barton had cited Bultitude as authority for the proposition that a solicitor who neither knew nor cared about the

consequences of his actions could be guilty of conscious impropriety to the extent of subjective dishonesty. In the Tribunal's view this went further than "burying one's head", although all would depend on the facts of the individual case. Consequently the Tribunal would apply Twinsectra, as further interpreted in Bultitude. The Tribunal had considered whether there was anything in the Respondent's behaviour that exhibited a reckless disregard that would negate any belief he might hold about the honesty of his actions. It had concluded that on the facts before it there was not.

232.5 The Tribunal had considered at length how the authorities applied in this case and whether the Respondent had been dishonest. The Tribunal had heard the Respondent's explanation of what had occurred and about the Respondent's workload and his desire to assist and please his clients. The Tribunal had seen some of the firm's ledgers and there was no doubt that they were in a state of complete disorganisation. The Tribunal had heard from the Respondent about the mistake that he had made in taking on the W Estates matter and of the lack of assistance he had received from his partner. The Respondent had indeed displayed rank incompetence and the 'chaotic universe' explanation proposed by Mr Allen was at least possible. His approach to matters following the first forensic investigation had to be looked at in the light of all of these factors. There had been no allegation of dishonesty in that investigation and it was perfectly possible that he had thought that he was failing to follow the Accounts Rules and nothing more. He had just continued in the same vein.

Allegation 2.2

232.6 The Tribunal was in no doubt that what was alleged was objectively dishonest conduct by the standards of reasonable and honest people.

232.7 In respect of the bank, his evidence was that he was not compelled to tell the bank about the monies, as there was nothing in his loan or overdraft agreement suggesting that he should do so. He was concerned that his overdraft would be stopped or reduced and he said that he was aware that this had happened to other firms. It was possible that he thought that he was just being astute in this regard.

232.8 The Tribunal felt that the Respondent had a chaotic lifestyle. His actions could be viewed as an attempt to prevent the firm's overdraft being reduced by the bank; there was no shortfall or loss to clients. In particular, there was not sufficient evidence to show to the required standard that he did not care about the issues.

232.9 The Tribunal could not be certain that the Respondent himself was aware that he was acting dishonestly by the ordinary standards of reasonable and honest people and therefore concluded that this part of the dishonesty allegation had not been proved beyond reasonable doubt.

232.10 There was an outstanding debt to HMRC which now formed part of the Respondent's IVA. He had said in evidence that he had not realised the extent of his liability, which has as he said "just rolled". He gave evidence that what he had done was out of habit. There was no evidence before the Tribunal that he had actively misled HMRC. In all of the circumstances the Tribunal again concluded that although the Respondent's behaviour in this respect of ensuring his tax affairs were up to date left much to be

desired, the Applicant had not proved this part of the dishonesty allegation to the required standard.

232.11 There was insufficient evidence before the Tribunal that the Respondent had been dishonest towards his partner. No documentation had been produced to show that the partner had complained as to his profit share and the partner had not given any evidence to this effect. The Tribunal again concluded that the Applicant had not proved this part of the dishonesty allegation to the required standard.

232.12 The Tribunal found that the dishonesty allegation associated with allegation 2.2 had not been proved to the required standard.

Allegation 2.3

232.13 The Respondent had admitted that he had provided banking facilities but had been unable to see the harm in so doing. He had admitted that this was “wrong”, indeed he had known that it was wrong from the first forensic investigation but it could not be said that he had not known that it was dishonest from that investigation and no allegation of dishonesty had been made. The Tribunal had heard that no client had lost money as a result.

232.14 The Tribunal took into account all of the background facts, including the first investigation and the Respondent’s own evidence. It was not persuaded to the required standard that allowing the firm’s client account to be used as a banking facility would be regarded as dishonest by the ordinary standards of reasonable and honest people.

232.15 There was no evidence that the monies had been used for unlawful purposes and in some instances payments were made, on clients’ instructions, from their client account to satisfy monies owed to others. There was no loss or shortfall to clients.

232.16 The Respondent was made aware from the first forensic investigation that it was wrong for him to provide banking facilities to his clients. It was at no time in that investigation suggested to him that his actions were dishonest. The Tribunal therefore did not believe that a reasonable and honest person would regard the continuation of the wrongdoing sufficient evidence to make that conduct dishonest even though he must have known it was wrong.

232.17 In that event it was not necessary for the Tribunal to consider whether the Respondent himself had regarded it as dishonest behaviour. The Tribunal found this part of the allegation not proved to the required standard.

Previous Disciplinary Matters

233. None.

Mitigation

234. Mr Allen told the Tribunal that, save for any element of dishonesty, the Respondent had made full admissions in March 2014. In Mr Allen's submission he should be given credit for those admissions. The Respondent should accordingly be given a reduction in sanction to reflect the fact of his admissions and that no dishonesty had been proved against him.
235. In questioning by the Tribunal, Mr Allen said that the Respondent did not however resile from his original acceptance that that he would be struck off for these offences.

Sanction

236. The Tribunal referred to its Guidance Note on Sanctions when considering the appropriate and proportionate sanction.
237. Although the Tribunal had not found the allegations of dishonesty proved against the Respondent this was a very serious set of allegations in which the Respondent had accepted a lack of integrity.
238. The Tribunal was appalled by the wholesale and widespread breach of Accounts Rules and of the Solicitors Code of Conduct, which the Respondent had allowed to continue despite previous warnings from the SRA. He had taken a cavalier approach to the firm's accounting and in doing so the Respondent had put the public at risk, although the Tribunal had heard that there had been no actual loss by the public.
239. The Tribunal had examined closely the aggravating and mitigating factors surrounding the Respondent's behaviour and had concluded that it was both deliberate and repeated, has been continued over a lengthy period of time and that he had known or ought reasonably to have known that his conduct was in material breach of obligations to protect the public and the reputation of the profession. The Tribunal found very few mitigating factors; if the Respondent had insight into his behaviour then it was belated.
240. The Tribunal carefully considered all levels of sanction short of strike off, but considered that none, including indefinite suspension, were appropriate. The Tribunal noted that striking off was an appropriate penalty even in the absence of dishonesty when the seriousness of the misconduct was very high and the Respondent had departed from the required standards of integrity, probity and trustworthiness. Indeed the Sanctions Guidance indicated that:

“In such cases, the Tribunal will have regard to the overall facts of the misconduct, and in particular the effect that allowing the Respondent's name to remain on the Roll will have upon the public's confidence in the reputation of the profession.” (SRA v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin.))

241. In all the circumstances, allowing the Respondent to remain on the Roll would undermine the public confidence in the reputation of the profession and the Tribunal decided that the proportionate and appropriate sanction to protect both the public and the reputation of the profession was that of strike off.

Costs

242. The Applicant asked for the costs shown on the costs schedule of £86,835.49 plus an additional £2,400 to reflect the additional time taken for the hearing. The total costs claimed were therefore in the sum of £89,235.49. The schedule had been served upon the Respondent according to the Tribunal's rules.
243. The costs were not agreed by the Respondent and in Mr Allen's submission the Respondent should not be liable for the costs of the hearing. The only contested allegations of dishonesty had not been proved. In that event the costs of the hearing, including preparation time, should be deducted from the total amount claimed.
244. Mr Allen also observed that the one hundred hours spent by the advocates for the Applicant on reading the papers and drawing the Rule 5 and 7 statements was a great deal of work for a two day hearing and disproportionate to the time spent by the defence.
245. Mr Allen said that he made no comment about the investigation costs.
246. Mr Barton said that the Respondent had given no answer to the allegations despite the directions given by the Tribunal at a case management hearing on 18 March 2014 and his admissions to everything save dishonesty were not fully made until March 2014.
247. If the Applicant had decided not to proceed with the dishonesty allegations and applied to the Tribunal to withdraw the application that would not necessarily have been straightforward; it was not easy to apply for withdrawal unless that could be fully justified.
248. The Rule 7 statement had taken over a week to draft and there was no duplication in costs between him and the previous representative of the Applicant.
249. In response Mr Allen said that he did not suggest that proceeding with the dishonesty allegation was improper in any way, just that the consequent litigation had not succeeded and the Respondent should not be responsible for the costs of litigation.
250. The Respondent had a claim against NatWest which would be set off against his debts; he would pay off his IVA.

The Tribunal's Decision in Relation to Costs

251. The Tribunal found that the dishonesty allegations had been properly brought. These were a serious set of allegations and the Applicant had been right to continue with the dishonesty allegations which were for the Tribunal to adjudge.

252. However, in the Tribunal's view the costs were very high for a case that had lasted for two days. This was a substantial bill of costs and in particular there were four very large items, the time taken on reading the papers and composing the Rule 5 and 7 statements respectively and the work done on the two forensic investigations.
253. In all the circumstances, as the parties could not agree, the Tribunal would order that the costs of the Application, including the costs of the forensic investigations, should be subject to a detailed assessment unless they could be agreed between the parties.

Statement of Full Order

254. The Tribunal Ordered that the Respondent, Marc Joseph Levy, 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Officers of the SRA.

Dated this 23rd day of October 2014
On behalf of the Tribunal

A.E. Banks
Chairman