SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11042-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ISAAC AGYEMANG BAFFOUR Respondent

Before:

Mr J. Astle (in the chair)
Mr P. Housego
Mrs L. McMahon-Hathway

Date of Hearing: 20 & 21 February 2014

Appearances

Peter Steel, Solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF for the Applicant

Frans Khan, Counsel, instructed by direct access, of Pantiles, 40 Brighton Road Banstead Surrey SM7 1BT for the Respondent who appeared

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JUDGMENT

Allegations

1. The allegations made against the Respondent, Isaac Agyemang Baffour on behalf of the Solicitors Regulation Authority ("SRA") were, first, set out in a Rule 5 Statement dated 9 August 2012 as follows:

1.1 In relation to a claim for damages issued in the name of Baftas Solicitors LLP in breach of Rules 1.01, 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") sought to mislead the Court and the Defendant by:

(i) falsely claiming as "loss of earnings" lost fee income for two solicitors who had not done any work for the Respondent's firm on the relevant dates;

(ii) falsely representing in an application to amend the Particulars of Claim dated 4 December 2009 that he acted on behalf of Baftas Solicitors LLP;

(iii) falsely representing in a statement dated 28 April 2011 that Baftas Solicitors LLP had operated until 25 November 2009 and/or he had practised in partnership until that date; and

(iv) falsely representing in a statement dated 28 April 2011 that at no stage had he represented himself as the solicitor on record for the Claimant.

It was also alleged that the Respondent's conduct as set out above was dishonest, though for the avoidance of doubt that it was not necessary for dishonesty to be established for the other allegations to be made out.

2. Secondly, in a Rule 7 Statement dated 27 November 2012 that he:

2.1 did not retain deposit monies as stakeholder as required by the standard conditions of sale in breaches Rules 15 and 22 of the Solicitors Accounts Rules 1998 "(the SAR")

2.2 fabricated a letter purportedly from his client dated 5 May 2010 in breach of Rules 1.02 and 1.06 of the Code;

2.3 failed to account to his client in full for completion monies in breach of Rules 1.02, 1.04 and 1.06 of the Code and Principles 2, 4 and 6 and Outcomes (1.1) and (1.2) of the SRA Code of Conduct 2011; and

2.4 provided a service to his client that was so poor as to amount to misconduct in breach of Rule 1.05 of the Code;

2.5 failed to comply with a direction of the Legal Ombudsman in an open, prompt and cooperative way in breach of Principle 7 of the SRA Principles 2011;

2.6 failed to fulfil undertakings given to WS Solicitors within a reasonable time or at all in breach of Rule 10.05 of the Code; and

2.7 provided misleading or inaccurate information to WS Solicitors by stating that he held redemption statements to all the charges over 1 DW Avenue, when he did not, in breach of Rule 1.02 of the Code.

It was also alleged that the Respondent's conduct as set out above at 2.2 was dishonest, though for the avoidance of doubt it was not necessary for dishonesty to be established for the allegation to be made out.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Pleadings bundle including:
  - Rule 5 Statement dated 9 August 2012 with exhibit PS1
  - Response statement of the Respondent to the Rule 5 Statement dated 10 November 2013
  - Rule 7 Statement dated 27 November 2012 with exhibit PS2
  - Response statement of the Respondent to the Rule 7 Statement dated 12 November 2013
  - Statements on behalf of the Applicant (not enclosed in PS1 or PS2)
  - Statements on behalf of the Respondent
  - Memoranda of Directions by the Tribunal
  - Further relevant documents
- Statement of Jonathan Moore dated 4 February 2014 with exhibit JJM1
- Opening note on behalf of the Applicant
- Letter from Bevan Brittan to Mr PG dated 9 January 2014
- E-mail exchanges between Bevan Brittan and the Respondent including an e-mail from Mr PG dated 10 January 2014
- Judgment in the case of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin)
- Updated schedule of costs dated 12 February 2013 (sic)

Respondent

- Trial bundle in two volumes including, other than contained in the Applicant's bundle:

- Extracts from client files
- Skeleton argument
- Witness statement of Mr Louis Lourdes dated 21 February [2014]

Preliminary issues

4. Mr Steel informed the Tribunal that following the Respondent's response to the Rule 7 Statement dated 12 November 2013 and the Respondent's witness statement dated 10 December 2013, a number of matters were put in issue about negotiations between the Respondent and Mr Jonathan Moore ("Mr JM") solicitor for Mr Wright ("Mr W") about the latter's complaint to the Legal Ombudsman particularly about the Respondent having produced in his response and statement two letters dated 15 April 2012 and 10 May 2012 which Mr Moore stated that he did not receive. Accordingly Mr Steel had sought a witness statement from Mr JM and served it on the Respondent outside directions given by the Tribunal under Rule 14(6) of the Solicitors (Disciplinary Proceedings) Rules 2007 which stated:

> "If any party intends to call as a witness any person who has not produced a Statement, he must, no later than 10 days before the date fixed for the hearing, notify the Clerk and any other party to the proceedings of his intention and forthwith serve a copy of a written proof of evidence on the other party and lodge five copies of proof with the Clerk."

Mr JM would attend the Tribunal to confirm the contents of his statement dated 4 February 2014 and Mr Steel applied for Mr JM's witness statement to be admitted as evidence. For the Respondent, Mr Khan objected on the basis that the statement was served late but because the Tribunal was being told that Mr JM would attend to be cross examined, Mr Khan considered that any problem caused by the late service would be cured. The Tribunal determined that the witness statement of Mr JM dated 4 February 2014 be admitted into evidence. Mr Steel also applied to amend the Rule 7 Statement as to typographical errors as detailed in his opening note. Mr Khan raised no objection and the Tribunal agreed.

5. On the second day of the hearing, Mr Khan sought the Tribunal's permission to call, initially as a character witness, Mr Louis Lourdes ("Mr LL") who had already given a statement of fact dated 13 December 2013. Mr Khan indicated that having taken instruction he now wished to deal with wider matters in examining Mr LL, especially because he was aware of the identity of various solicitors who worked at the firm and could state whether Mrs De-Souza ("Mrs D-S") and Mrs Okafor ("Mrs O") were working there at or around the time of the flooding. For the Applicant, Mr Steel objected because this was not in accordance with Rule 14 (6) and he had had no notice of what the individual intended to say outside of his statement. The Tribunal considered that the Respondent had had ample opportunity to foresee that he wished to call Mr LL as a witness of fact and that in the absence of any notice to the Applicant it would not be fair at this late stage to permit the witness to give evidence as to facts. Mr Steel indicated that subject to having sight of whatever testimonial the proposed witness intended to give for the Respondent, he did not object to Mr LL being called as a character witness. The Tribunal agreed that subject to the proviso

that Mr Steel was to be provided with a copy of the testimonial and had the opportunity to object to its admission into evidence, Mr LL could testify.

Factual Background

Allegation 1.1

6. The Respondent was born in 1966 and was admitted as a solicitor in 2005. At all material times he was practising as a member of Baftas Solicitors LLP ("B LLP") or as a sole practitioner under the style Baftas Solicitors ("B Solicitors"). These entities are also referred to in this judgment where the distinction between them was not material, as "the firm".

7. The matters which formed the subject of the Rule 5 Statement were brought to the Applicant's attention by a report from BC LLP ("BC") dated 14 September 2010. BC acted on behalf of A Insurance plc, the insurers of P Properties Ltd the freehold owners of the flat above the practising address for the firm. On or about 22 June 2009, there was an escape of water from pipes in or adjacent to the flat which entered the offices of B LLP which were located below it. It was subsequently alleged that this was the second of three such escapes, the others had incurred in March and November 2009 and the further damage this caused led to amendments of the pleadings in an action brought by B LLP against G University ("the Defendant") to whom the property was leased by P Properties Ltd.

8. The Claim Form was signed by the Respondent on behalf of B Solicitors who were stated to be the Claimant's solicitors. The Particulars of Claim were signed on 15 July 2009 by the Respondent on behalf of B LLP. The claim was issued in the High Court with an issue date of 30 September 2009 and the matter was transferred to Lambeth County Court. The Defendant filed a defence to claim and joined P Properties Ltd to the action under Part 20 of the Civil Procedure Rules ("CPR").

9. The claim was struck out by District Judge Wakem following a hearing at the County Court on 27 October 2010. A transcript of the judgment in the matter was before the Tribunal. The accuracy of a transcript of the judgment as to the facts found by the Court was not disputed during the hearing.

10. The complaint by BC was, in so far as relevant to these proceedings, that the Respondent had made inaccurate statements in pleadings and/or exaggerated his claim for loss of earnings.

11. The Particulars of Claim dated 15 July 2009 contained a claim for loss of earnings totalling £28,000.

12. BC made a Part 18 request for further information on 8 June 2010.

13. The Respondent replied by way of a letter dated 21 June 2010. In the request for further information, P Properties Ltd sought an explanation as to how the Respondent, on behalf of the firm, had arrived at the claimed damages sum for the loss of earnings of £28,000.

14. The letter dated 21 June 2010, apparently signed by the Respondent asserted:

> "£28,000 represents minimum estimated loss of income as a result of the accident over the four days including consequential loss detailed above.
>
> Two partners at the time of the accident, [the Respondent], full time supervising partner at £250 an hour x 8 x 4 days, Mr [PG], part-time £120 per hour x 8 x 4, Violet De-Souza, Solicitor over eight years [post qualification experience] at the time £200 x 8 x 4, Mrs Okafor, solicitor consultant, £100 x 8 x 4, [AO], Secretary.
>
> Basement rooms represent 50% of Claimant's office space though cannot be utilised due to the accident. Rent however continues to be paid on the whole premises"

15. BC indicated in the letter of 14 September 2010 that the Applicant had subsequently confirmed in correspondence that Mrs D-S had, according to the Applicant's records, ceased employment with B LLP on 31 March 2009, suggesting she had not been employed at the relevant time. Further, the Applicant's record also suggested that Mrs O left the firm at the end of February 2009.

16. In an e-mail to the Applicant dated 1 August 2011, Mrs D-S stated that she was not employed by B LLP subsequent to 31 March 2009.

17. Similarly Mrs O stated that she did not attend the firm during "the flooding" and that she was not employed there at the time.

18. There were three schedules in the Respondent's bundle; one related to the period 26 November 2009 to 5 April 2010 and showed four payments to Mrs O dated between 21 December 2009 and 2 March 2010, another related to the period 6 April to 25 November 2009 and showed one payment to Mrs O on 2 November 2009; the third from 6 April 2008 to 5 April 2009 related mainly to Mrs D-S with 10 payments and showed two payments only to Mrs O on 16 January 2009.

19. During the hearing on 27 October 2010, the Court also considered the Respondent's application to be substituted as a Claimant on the basis that on 26 November 2009, the firm and the Respondent had entered into an agreement whereby B LLP:

> "has agreed to transfer all the beneficial interest and clients in the legal advice business carried on at [address] to Mr Bafor (sic), commonly known as Isaac".

20. As the District Judge indicated in the judgment, the Respondent represented to the Court that the effective date of transfer of the entitlement to the claim to him was 26 November 2009. However on 4 December 2009 the Respondent made an application to amend the Particulars of Claim which contained a statement of truth "which he signed as "Isaac Bafour (sic) on behalf of Baftas Solicitors LLP."

21. As also set out in the Judgment of District Judge Wakem dated 27 October 2010, the claim brought on behalf of the firm was eventually struck out on the basis that B LLP itself had ceased to exist, having been struck off by Companies House.

22. The Applicant's records contained a copy of an application form RSP1 for approval to practise as a sole practitioner and accompanying correspondence submitted by the Respondent and received by the Applicant on 19 November 2009.

23. The submission of this form with a declaration of compliance confirming the information provided was accurate led to a reference by the Applicant to an Adjudicator who considered that the Respondent had practised in breach of Rule 12.01 of the Code as a sole practitioner in the period 22 October 2009 - 25 November 2009 without authorisation by the Applicant as a recognised sole practitioner. The Respondent responded to the allegation stating that this had arisen as a mistake and on the basis that recognition was granted within a month or so and there was no evidence that there had been any prejudice to the interests of the public in the Adjudicator's view, she decided on this occasion to take no further action.

Allegation 2.1 to 2.7

Sale of 1 DW Avenue

24. The alleged conduct arose from the Respondent's handling of the sale of 1 DW Avenue, London on behalf of his then client Mr W to a Mr O and Ms M for the sum of £940,000.

25. Mr W had instructed the firm to act on his behalf in September 2009. The client care letter dated 7 September 2009 from B LLP signed by Mr W stated that the firm would charge Mr W £850 plus VAT for "all the work necessary in the sale". Work essential to the sale of the property included the removal of various notices and charges against the property. Also as part of the retainer, the Respondent was to pay off credit card balances with monthly payments. The client care letter stated the rate of VAT correctly as 15%. The letter requested £350 on account and stated the overall charge for the matter would therefore be in the region of £1,039.50. Mr W confirmed that he signed this letter and returned it to the firm.

26. Exchange of contracts took place in December 2009 within an agreed completion date of 14 September 2010. In the interim, the purchasers occupied the property on an Assured Shorthold Tenancy between 15 December 2009 and 14 September 2010. The contract of sale incorporated the Standard Conditions of Sale (Fourth Edition) ("the SCS"). They provided that the deposit was to be held by the firm as stakeholder.

27. At the time of exchange, a 10% deposit was paid, being £94,000, together with payment of seven months' rent in the sum of £24,500. The following charges were registered against the property at that time:

- Registered charge dated 5 November 2002 in favour of Bank of Scotland, registered on 15 November 2002;
- Registered charge dated 30 December 2005 in favour of S Ltd also referred to E plc or C Mortgage Services, registered on 18 January 2006;
- Equitable charge dated 5 June 2007 in favour of Barclays Bank plc (trading as Monument), registered on 26 October 2007;

- Equitable charge dated 27 December 2007 in favour of HSBC Bank plc, registered on 17 January 2008;

- Equitable charge dated 11 November 2008 in favour of C Ltd, registered on 22 December 2008.

28. Despite the fact that the firm was to retain the deposit monies as stakeholder, Mr W confirmed that, at his request, he received two lump sums of £45,000 and £20,605 from the Respondent as the ledger showed. He asked the Respondent to pay the outstanding amount to him but was told by the Respondent that, in accordance with [unspecified] conveyancing law, the firm would retain 20% of the deposit.

29. Prior to completion, Mr W requested the remainder of the "sale proceeds", that is what was left of the deposit monies and the rent paid by the purchasers. He stated that the Respondent told him that he must sign an authority for the firm to retain £10,000 representing legal costs before any monies could be paid to him. Mr W duly signed the authority subject to the legal fees being finalised and agreed with the Respondent. The client ledger showed that on 1 November 2010, £10,000 was transferred from client to office account under the reference "A D Baffour- profit cost".

30. Completion was delayed and took place on 10 November 2010 rather than 14 September 2010 as intended. Completion was delayed in part because the purchasers were yet to obtain a satisfactory mortgage offer. At the anticipated completion date a bankruptcy notice in respect of Mr W remained registered against the property. The effect of the bankruptcy notice would have been to avoid any subsequent disposals of the property were a bankruptcy order made, unless the Court consented to the disposal. The petition had in fact been discharged on 1 November 2006; however the Respondent had not dealt with the removal of the notice from the register. Mr W himself made the relevant application to the Land Registry for removal of the bankruptcy notice.

31. Following completion Mr W was given a draft completion statement dated 11 November 2010. How he obtained it was disputed. That statement included a "broker fee" of £18,800. The completion statement indicated the Respondent's fees for the transaction were £12,850.

32. On 11 November 2010, £100,000 of the sale proceeds was paid from client account to Mr W.

33. The client ledger showed a number of other payments out of client account in respect of profit costs between 22 December 2009 and 7 March 2011, most of which had the reference "Baftas" or "Baffour", totalling £31,820. Save for the £10,000 retained with his consent, Mr W stated that he did not receive a written notification of costs or otherwise authorise the other withdrawals.

34. As at January 2011, Mr W asserted that he had not received the balance of the sale proceeds, nor had the Respondent provided a final completion statement and Mr W instructed Streeter Marshall ("SM Solicitors") to recover the monies he felt to be due.

35. SM Solicitors wrote to the Respondent on 21 January 2011 requesting copies of the firm's Terms of Business, the estimate of fees provided to Mr W at the outset of the matter in September 2009 and any updates provided regarding any anticipated increase in the legal fees incurred throughout the course of the transaction. The letter also requested copies of the redemption statements received in relation to each of the charges registered against the property and proof of their discharge.

36. The Respondent replied by letter dated 10 February 2011, enclosing copies of client care letters he stated had been sent to Mr W on 7 September 2009 and 26 November 2009. Those two letters provided by the Respondent stated that Mr W would be charged an hourly rate of £320 plus VAT at 17.5%, charged in units of 20 minutes. The VAT rate at the time the additional client care letters were said to have been sent to Mr W was 15%. The letters were not countersigned by Mr W and referred to the conduct of litigation, as opposed to conveyancing matters. Mr W stated that he had not received these letters, and had not seen them until he became aware of them through these proceedings.

37. The Respondent sent a final bill to Mr W in the sum of £35,637.20 on 1 March 2011.

38. The Respondent's file included two letters apparently signed by Mr W. Both letters had as a heading "Sale of 1 [D W] Avenue..." One, an original letter dated 25 October 2010 stated:

> "I hereby authorise Baftas Solicitors to retain £10,000 out of my sale proceeds to discharge bill of costs on my several legal matters including 29 [W] Way London."

39. Another, a copy of a letter dated 5 May 2010 letter stated:

> "I hereby authorise Baftas Solicitors to retain £21,400 on account to discharge my legal costs in this matter."

40. As at 28 March 2011, the sum of £37,548.36 was claimed to be due to Mr W including the £10,000 retained by the firm as set out in a statement prepared by SM Solicitors when the matter was thereafter referred to the Legal Ombudsman. The Legal Ombudsman directed on 12 January 2012 that the Respondent have an independent bill of costs drawn up and return any monies held to Mr W, save for the £10,000 retained. The Respondent had not complied with the direction. The Legal Ombudsman took proceedings against the Respondent to which a penal notice was attached in January 2013 and it was understood that it had not proved possible to serve the order upon the Respondent.

Undertakings to WS Solicitors

41. WS Solicitors acted on behalf of a bridging loan company H Finance Ltd, in relation to an advance made to the purchasers of 1 DW Avenue. Ms Sarah Sharp ("SS"), a partner at WS had conduct of the matter.

42. The Respondent gave undertakings to WS Solicitors in letters dated 3 November and 8 November 2010. The letter of 3 November 2010 stated:

> "We undertake that upon receipt of full completion funds, we will redeem all financial charges noted in the charges register of the above property, remit evidence upon receipt and forward transfer deed to you directly.

43. That letter was copied to the purchaser's solicitors EJ LLP. WS Solicitors required clarification of the undertakings in a letter dated 8 November 2010.

44. By return on 8 November 2010, the Respondent provided further details of the specific charges that would be discharged as part of his undertakings:

> "...that upon receipt of full completion funds we undertake to discharge the following charges on the above property:
>
> 1. Registered charge dated 5th November 2002 registered on 15th November 2002 in favour of Bank of Scotland
>
> 2. Registered charge dated 30th December 2005 registered on 18th January 2006 in favour of [E] PLC
>
> 3. Equitable charge dated 5th June 2007 registered on 26th October 2007 in favour of Barclays Bank PLC
>
> 4. Equitable charge dated 27th October (sic) 2007 registered on the 17th January 2008 in favour of HSBC Bank PLC
>
> 5. Equitable charge dated 11th October (sic) 2008 registered on the 22 December 2008 in favour of [C] Ltd
>
> We confirm receipt of up-to-date redemption statements on all charges outlined above That (sic) the net proceeds of sale is sufficient to redeem the above charges
>
> We hold executed transfer deed in favour of [O] and [M] the buyers. Upon Receipt of full completion funds transfer deed will be released direct to you."

45. The Respondent had previously given an undertaking in corresponding terms to EJ LLP, acting on behalf of the purchasers, in a letter dated 20 September 2010.

46. The Respondent's file also contained copies of two additional letters dated 8 November 2010 on the notepaper of B Solicitors. The shorter of the two additional letters dated 8 November 2010 stated:

> "Further to our communication dated 8th November 2010
> We would like to correct an error
> We are yet to receive an up to date redemption statement
> However we have in our possession particulars and claim form regarding charge which states balance outstanding including interests (sic)
> We will retain sufficient funds and undertake to redeem charge upon receipt of redemption statement and undertaking from Barclays Bank"

The longer letter stated:

> "Further to our letter of even date
> With respect to our client's liability under Barclays Bank's charge dated 5th June 2007.
> We reiterate once again that we acted on our client's behalf with respect to the charging order application in court.
> Our client owed including interest £10,677.04. Our client paid off £3,000 initially
> Our client has also made a further payment of £1,500
> We would retain at least £11,000 on account and undertake to discharge liability upon receipt of final redemption statement from Barclays
> We now await receipt of funds for completion"

WS Solicitors disputed that they had received these additional letters.

47. The client ledger showed the completion monies were received on 10 November 2010, including £151,363.12 from WS Solicitors. However, Ms SS confirmed that WS Solicitors did not receive the transfer until 25 November 2010. WS Solicitors was at that point in a position to lodge an application for registration of the loan against the property, but was unable to do so because the forms of discharge in respect of the five charges had not been received. There were discussions and correspondence between Ms SS and the Respondent over the subsequent weeks.

48. The ledger and letters from the firm to solicitors acting for C Ltd and solicitors acting for HSBC showed that payments in respect of the equitable charges held by C Ltd and HSBC were not made until 6 December 2010, nearly four weeks after completion took place. There was a request in the trial bundle dated 01 November 2010 from the firm to solicitors acting for Barclays Bank trading as Monument asking for a redemption figure and another letter to Barclays Bank dated 3 December 2010 making a similar request, repeated in a letter dated 16 December 2010. A letter dated 3 December 2010 to C Mortgage Services referred to redemption funds sent on 11 November 2010 by CHAPS and enclosed form DS1 and there was a reminder letter dated 16 December 2010 to C Mortgage Services.

49. As at 4 January 2011, WS Solicitors had not received evidence of discharge of the five charges and Ms SS therefore wrote to the Applicant expressing her concerns. That letter was copied to the Respondent who replied to Ms SS by letter dated 5 January 2011 (incorrectly dated 4 January 2010). It was apparent from the enclosures provided by the Respondent at that stage, that the Respondent had not received an up to date redemption statement from Barclays Bank in relation to the equitable charge dated 5 June 2007. Ms SS recorded in an attendance note of a telephone call that day that the Respondent told her that he did not hold a redemption figure for that charge.

50. A redemption statement for the charge held by Barclays Bank was obtained on 10 February 2011, three months after completion.

The Applicant's investigation

51. The Applicant wrote a number of letters to the Respondent seeking explanation of the complaints received from Mr W's solicitors and from Ms SS.

52. On 5 April 2011, the Applicant wrote to the Respondent regarding the work undertaken on behalf of Mr W under his instructions of September 2009 and directed the Respondent to produce the file of documents relating to the sale of 1 DW Avenue.

53. The Applicant received the original file on 17 May 2011. It included a copy of the letter dated 5 May 2010 which appeared to be signed by Mr W authorising the firm to retain £21,400 on account of legal fees.

54. The client file obtained from the Respondent did not contain an original copy of the 5 May 2010 letter.

55. The Applicant wrote the Respondent on 12 December 2011 requesting a response to various allegations, and in particular indicating that the Respondent's file did not contain the original of the letter of 5 May 2010. The Respondent had not provided a response to the letter at the date of the Rule 7 Statement.

56. By letter dated July 2011, the Applicant raised the issue of the undertakings with the Respondent who replied by letter of 27 July 2011 denying the allegations.

57. Enclosed with his letter of 27 July 2011 were copies of two letters both dated 8 November 2010 which the Respondent stated he had sent to WS Solicitors. These letters apparently sought to qualify the undertakings given on 8 November 2010. Ms SS stated that she did not receive these letters. Her attendance note of her telephone conversation with the Respondent on 5 January 2011 did not refer to them.

58. WS Solicitors wrote to the firm on 25 November 2010 referring to and setting out the original undertaking contained in the Respondent's first letter dated 8 November 2010. EJ LLP also appeared to be proceeding on the basis of the original undertaking and wrote to the firm on 9 December 2010, requesting evidence of discharge of the five charges against the property, as a matter of urgency.

59. On 29 September 2011, the Applicant wrote to the Respondent requiring his comments on WS Solicitors' assertion that the two further letters of 8 November 2010 had never been received. The Applicant also requested an explanation of why copies had not been sent to EJ LLP. In a letter dated 10 October 2011, the Respondent stated that delivery of letters was beyond the firm's control and did not comment on not having provided copies to EJ LLP.

Witnesses

60. **Mrs Violet De-Souza** gave evidence; she confirmed the truth of her witness statement dated 19 December 2013. She had ceased working at the firm on 31 March 2009 and after that she went to visit the Respondent to collect payments due to her and offered to assist if there were any queries on matters relating to existing files. In cross

examination the witness was referred to the statement of Mrs PA dated 13 October 2013 who described herself as the firm's bookkeeper and stated:

> "To the best of my knowledge and according to my accounting records including bill of costs and payments, Mrs Violet De-Souza worked with the firm in a self-employed capacity during the time of the incident and for sometime thereafter."

The witness stated that this was not correct. She was then referred to two schedules including her name and under the heading "Expense" on one schedule, various sums of money against dates from 5 October 2008 to 22 January 2009 and on the other schedule one sum shown against 19 November 2009. The witness was also referred to other documents including; bills of costs to which bore the initials VD dated 1 and 3 June 2009; the witness stated that she usually used the initials VDS. The witness recognised the client's name on one of the early June invoices. The witness stated that after she left the firm she still submitted invoices once a matter had completed but did not recognise these. She was referred to documents in a case for clients Mr and Mrs N, the latter also described as Ms P, where the contract showed a completion date of 24 April 2009 with a certificate of title which had been dated 16 April and the name of the authorised signatory in handwritten capital letters "VIOLET DE-SOUZA". The witness stated that the capital letters were more like her handwriting but that the signature on the certificate of title did not look like hers although she agreed it looked similar; normally her signature was straight and this was slanted. She also pointed out that mortgage deeds such as the one in this case were often prepared in advance. The witness stated that she did not recall this particular file or this client. As to a document submitted to a building society in respect of the transaction, the witness informed the Tribunal that she believed the reference on it to be that of the Respondent. The witness was then referred to another client Mr S where the reference VDS was used. The witness knew the individual under a different first name from that used in the address on a letter from the firm dated 19 January 2009 with the reference VDS. Correspondence in the matter continued through February, March and April 2009 and there was an attendance note dated 21 April 2009. As to the fact that the correspondence continued after she left the firm, the witness stated that she had known this individual for a very long time and seen him inside and outside work and on a personal basis and he had her mobile telephone number. She would make an attendance note if their communication related to work. She pointed out that an attendance note where a caller was asking for her was prepared by a secretary, and was not confirmation that she was still there. At the beginning, after she left, she went to visit the Respondent and he asked her to assist on certain cases and she did. The basis upon which she was supposed to be paid was 50% of a bill issued but on matters which did not finish until after that, the Respondent did not pay 50% because she had not done all the work. She had handed all her files to the Respondent; he was the only other lawyer working there and as far as she knew no one else was doing conveyancing work at the firm. In respect of the office system and the allocation of reference numbers, the witness stated that they just used Word and anyone could type a reference on a letter; there was no case management system. The witness did not think that she and the Respondent had discussed how matters would be identified after she left in terms of reference numbers. She listed all her matters and left notes about what stages they were at and what needed to be done.

61. **Mrs Adaobi Okafor** gave evidence. She confirmed the truth of her witness statement dated 9 September 2012. In cross examination, the witness was asked if she knew Mrs PA the bookkeeper but she could not remember her; she had seen two people at the firm one of whom was female and the Respondent said that she was a family member. The witness had never had occasion to speak with her. As to Mrs PA saying that the witness worked at the firm around the time of the flooding incident, the witness stated that she had evidence to show that she was not there; she had been doing a police station course in Cardiff on 17 June 2009 and thereafter attending a County Court. She had documentary evidence that she had paid for a live assessment, and had to be there with her supervisor almost every day at the County Court. There was a discussion about whether that written evidence should be admitted and Mr Khan objected on the basis that it was too late. The Tribunal determined that only the oral evidence of the witness would be admitted. The witness stated that she was supposed to be paid on a 50/50 basis for any case she brought to the firm and one of the cheques by which she was paid bounced. Two of the cases (probate matters) which she brought to the Respondent led to client complaints. The witness decided, having previously undertaken immigration work, that she would do criminal work and she attached herself to another firm which specialised in crime. As to the references to payment to the witness on the two schedules, these were not new cases. She had also undertaken cases as a locum and not as an employee. The payments on the schedules showed payments over the years of money that the Respondent owed to her. There were cases in which she was not paid, for example in one case the Respondent received £4,500 and she was supposed to have half of it. The witness stated that she had telephoned the Applicant out of anger when she was at a bus stop to tell the Applicant that she was no longer working at the firm. The witness was referred to documents relating to the client VY including a client care letter dated 12 August 2009 with a reference beginning AO/VY. The witness stated that this was not her letter; she had never done "client cares". She had never spoken to VY. As to a copy document in handwriting from which the date had partly been cut off, which Mr Khan understood was dated 7 October 2009, the witness agreed that this was her handwriting such as when she was sitting in with counsel or the Respondent for employment matters. She was also referred to a handwritten enquiry form giving an appointment date in August 2009 for this client relating to an immigration matter. The witness stated that the enquiry form was not hers. She also doubted the accuracy of the date on the handwritten notes referred to above and suggested that it might have been added to a note made in respect of something that had happened earlier. It transpired that the witness had been handed original documents for use when giving evidence and she was able to see that the date was in a different colour pen from the rest of the writing. The handwritten note was also in a different colour pen from the enquiry form. The witness was referred to a client Mrs A in a probate matter and a client care letter dated 2 February 2009 concerning the transfer the title of a property to this client. The reference on the letter began AO/PAA. The witness stated that the Respondent had worked on this matter and she learnt from him. She did not use that reference. The witness was learning wills and probate work from the Respondent. As to a document headed "CHANGE OF NAME DEED" for that client dated 24 March 2010, which had the stamp of "Isaac Baffour Solicitor Commissioner of Oath, Baftas Solicitors LLP" with the firm's address, a third stamp with the name of the witness as a Solicitor and a fourth stamp showing the name of another firm L Solicitors in the same street as the Respondent's firm, the witness stated that on 24 March 2010 she was working at L and she had signed the document in her association with L. While

working at L the witness had certified the document, prepared by the Respondent, as a true copy of the original. The witness was then referred to a document dated 25 March 2010 in handwriting, referring among other things to a change of name deed. The witness confirmed that the handwriting was hers. As to how the document came to be in a file at the Respondent's firm, the witness stated that this was her handwriting but at that time she was not working there. The Respondent had asked the witness to see this client because he had childcare issues. The Respondent dictated the letter. The letter was not hers. After the witness had advised the Applicant that she had moved from the firm, sometimes the Respondent called her to go to the office such as on one occasion when a drunken man had broken a window at the firm and he had asked the witness to go and see what was happening. She was working at a firm nearby and they asked each other's opinions. She had initially worked at the Respondent's firm when she was just qualified so that she had a place from which to renew her practising certificate. She did not have a client base. For most of the clients that she had sent him money was not forthcoming and she could not rely on not having money. She worked on a consultancy basis.

62. **Ms Sarah Sharp, Solicitor** gave evidence. She confirmed the truth of her witness statement dated 14th of September 2012. Her firm WS Solicitors as solicitors for the lender of bridging finance to the purchasers of 1 DW Avenue had received an undertaking dated 3 November 2010 from the Respondent's firm to redeem all financial charges noted in the charges register of the property. The witness was asked to explain the letter to her firm from the Respondent's firm dated 8 November 2010 which appeared to be a fuller version of the undertaking, giving details of the charges to which the undertaking related. The witness explained that it was the practice of her client. The witness confirmed that she had received both the letters and pointed out that each had her firm's receipt stamp. She was asked when she had first seen two other letters dated 8 November 2010. The witness stated that this was when they had been sent to her by the Applicant and therefore not shortly after they were dated. She confirmed that she had made enquiries at her firm to see if they had been received; it was a small firm and the opening of all post was overseen by a partner. She was sure that WS Solicitors had not received them. Had she received them at the time there was no way that the loan would have completed as the Respondent acting as solicitor for the seller could not complete. She would not have sent a certificate of title when she was not certain that the mortgages against the property could be redeemed. In cross-examination, the witness stated that she was aware that contracts had been exchanged in this matter some time previously; she was not sure if she was aware of the detail at the time but she might have been aware that completion had been delayed. It was put to the witness that around a dozen letters had been sent to Barclays by the firm in order to obtain the redemption statement and was asked what more the Respondent was supposed to have done in terms of his duty as a solicitor. The witness disagreed and stated that it was very simple; the Respondent was not in a position to complete the sale for his clients. She presumed that he was also instructed by the lenders to redeem the charges based on the Council of Mortgage Lenders Handbook. She agreed that all the charges had been discharged eventually.

63. **Mr John Wright** gave evidence. He confirmed the truth of his statement dated 3 September 2012 but he wished to make one qualification to that statement. At paragraph 10 he had stated:

> "I attach at page 10 of Exhibit JSW1 a copy of a document dated 5 May 2010. I have been provided with this document during the course of these proceedings and prior to referring the matter to the SRA I had not received this document. It purports to authorise Baftas to retain £21,400 on account to discharge Baftas legal costs. I had never seen this letter prior to the commencement of these proceedings and certainly did not sign it at any point. I note that the signature is identical to that on the letter I had signed in October 2010, which appears to have been superimposed or copied in some way onto the letter of May 2010. Furthermore, very little work was being carried out on my behalf at or around 5 May 2010 as completion was not due to take place until September 2010. I can categorically say that this is not an authority I provided and my signature appears to have been forged."

The witness stated that he was not too clear regarding the letter dated 5 May 2010; where he said he did not receive or sign it, he did not recall whether he did or did not [sign it]. The signature was very similar to his but he was not sure that it was his. The witness clarified for the Tribunal that he did not remember receiving the letter; he did not receive it. He did not remember signing the letter but the signature looked like his and was very hard to forge.

64. In cross-examination the witness explained that he had first consulted the Respondent in connection with a charge which Barclays Bank trading as Monument had put on the property. He agreed that the firm had come to an arrangement with the bank which bought him some time and he then decided to sell the property. He agreed that the Respondent was actively managing the tenancy arrangements between himself and the purchasers who moved into the property before completion and that the Respondent received rent and discharged the outgoings on the property and made a charge for his services. In his statement he referred to a broker's fee:

> "I also attach the draft Completion Statement I received from Baftas in November 2010 following completion. This states that Baftas' legal fees were £12,850 and also included a broker's fee of £18,800. I am unsure as to what work was carried out under the broker's fee although I know that it constitutes 20% of the original deposit paid £94,000, which equals the figure stated by Baftas that they intended to retain by law."

The witness stated that he had tried several times to reach the Respondent but he was out of the country; the witness went several times to the firm's offices; he wanted to know what he was getting. There was a clerk there who gave him a copy of the completion statement which contains the figure he was talking about and he gave it to his new solicitors in January 2011. He could not talk to the Respondent about the broker's fee as the Respondent had gone to bury his father. The witness agreed that it was possible that this was not the final version of the completion statement. As to the fact that the Respondent's ledger did not show any monies taken on the basis of a broker's fee, the witness did not know whether the Respondent took the money or not because he didn't see the ledger. In re-examination the witness confirmed that he was owed about around £27,000 by the Respondent aside from the £10,000 which had been put aside for legal fees from the sale of the witness's property. The witness confirmed to the Tribunal that he had said that he did not want to sign the letter dated 25 October 2010 authorising the Respondent to retain £10,000 to be held pending

agreement regarding fees but that the Respondent had said that he must sign in order to have money released. As to the status of the 5 May 2010 letter, the witness explained to the Tribunal that during the period that it was dated he was not doing anything about the sale of the property; everything was awaiting exchange in September 2010. He queried why he would sign for legal fees when nothing was going on; the Respondent was just paying the proceeds of the rent to his mortgage company, so other than that he did not understand why there would be more legal fees and then in October 2010 he was asked to sign the letter relating to the retention of £10,000. As to whether the witness had signed the 5 May 2010 letter, it was correct that he stated in his statement and said again today that he did not remember signing it and did not remember seeing the letter before. As to the fact that the Respondent said that after the letter was signed the Respondent had given the document signed by the witness back to him, the witness stated that normally with a letter like this, the original would not be given back to the client and it had not been given to him, "100% No". He was sure about that; he had found out about the letter when he was in Sydenham High Street and his solicitor called him and told him about it.

65. **Mr Jonathan Moore, Solicitor** of Streeter Marshall gave evidence. He confirmed the truth of his statement dated 4 February 2014. The witness stated that the Legal Ombudsman had decided not to take further action on Mr W's complaint because it had not been possible to serve the Respondent with the enforcement order. As to his client's prospects of recovering the monies which the witness said the client was owed, he had discovered that the Respondent owned four properties, some of which were subject to multiple charges and they were considering enforcement by way of a charging order. He had had no contact with the Respondent since the Respondent's letter to his firm dated 5 December 2013 when the Respondent stated that:

> "...as a kind gesture I will give Mr Wright back all the monies he paid the firm in respect of bill of costs. I have agreed that my property 39 [R Road] is sold and that upon sale I will let you have the same. I will grant Mr Wright a charge over the property or indeed any other property while it is sold."

The witness stated that there had been no contact because they knew that these proceedings were coming up and because the letter was saying what had been said before. Also the letter stated that the Respondent had just returned from abroad burying his father and other family members; the witness understood that the father had died three years previously. According to the Respondent his property 39 R Road was being sold but they had no idea as to the equity and there were charges on it including two unilateral notices on the property for £25,000 and £2,000 and the first mortgagee had a restriction so that it had to consent before any further charges could be registered, so that it might not be possible to register a charge to protect Mr JW. There was also the problem that without the Respondent's file being costed, they did not know was what was owed to Mr W. The witness stated that the first time he had seen a letter from the Respondent dated 15 April 2012 and addressed to his firm was when Mr Steel had sent it to him. In the letter the Respondent stated:

> "...My offer as indicated in my previous letter is that I am given up to 5 months from the date of my previous letter 10th March 2012 to raise £22,000 as full and final settlement of this matter. This is purely in the interest of further costs and time..."

The witness stated that the same answer applied to a letter dated 10 May 2012 from the Respondent to his firm asking for a response. He had checked his file and his firm had a place in its post room for unclaimed post. He had never seen these letters until Mr Steel sent them to him. The witness had been corresponding with the Legal Ombudsman at the time and each was asking the other had they heard anything. In cross examination, the witness rejected the suggestion that he was reluctant to engage in dialogue with the Respondent; who had failed to comply with the Legal Ombudsman's order and who had not had the file costed. As to costing the file becoming irrelevant if the Respondent paid back everything, the witness stated that this was the first time [in the letter of 5 December 2013] that the Respondent had offered to pay back everything. The witness did not feel that he should have chased the Respondent up in view of this impending hearing.

66. **Mrs Patience Akumiah** gave evidence. She confirmed her statement dated 13 October 2013. The witness stated that she had been the firm's book keeper since 2008. She was not in any way related or affiliated to the Respondent although they came from the same country. In cross examination by Mr Steel, the witness agreed that in her statement she said "I am aware of the incident of water escaping into the office..." and "The water escaped into the premises I learned happened sometime in June 2009." She was not in the office on the day it happened. She came to work on the Thursday and could not remember how long after it that was. She could not help regarding who was in the office during the incident; she saw the same people every day that she went there. The witness was asked about her statement where she said:

> "To the best of my knowledge and according to my accounting records including the bill of costs and payments, Mrs Violet De-Souza worked with the firm in a self-employed capacity during the time of the incident and for some time thereafter."

The witness made a similar statement in respect of Mrs O. In respect of Mrs D-S, the witness stated that the records she referred to were invoices which were raised recording that she was the fee earner. The witness stated that the schedule covering the period 6 April 2008 to 5 April 2009 which showed sums of money against Mrs D-S's name was a record of bills of costs of Mrs D-S entered into the day book. The date when she did the work for which she was being paid would be shown as a date on her invoice and that date was not recorded. In respect of the schedule relating to the period 26 November 2009 to 5 April 2010 where four sums were recorded for Mrs O, it was put to the witness that it did not help regarding the dates when Mrs O did the work. The witness stated that Mrs O did not raise invoices but was paid by cheque. Mr Khan in re-examination asked the witness about the bill of costs raised by A Solicitors dated 29 September 2009. The witness stated that Mrs D-S had raised the bill and she knew that because Mrs D-S sometimes worked at A Solicitors. The bill bore her reference VDS. The witness stated that she usually worked on Thursday at the firm and she worked on Thursday in the week of the flood but if the workload was more she came in on other days. The witness was then referred to eleven invoices all described as: "FOR CONSULTANCY SERVICES RENDERED TO THE FIRM OF BAFTAS SOLICITORS..."The periods they related to were recorded as November 2008, the week ending 19 December 2008, the period ending 9 December 2008, the week ending 8 January 2009, the week ending 12 January 2009, the week ending 22 January 2009, the week ending 10 April 2009, the week ending 22 May 2009 and

the week ending 5 June 2009. Aside from the first they either had the name Violet De-Souza handwritten or the name "V. De-Souza" in type script. Some were dated and others were not and all but one bore a signature of some sort. The witness confirmed that she had seen the invoices before and the circumstances were that they were invoices given to her first thing in the morning by the Respondent which she understood to be invoices from Mrs D-S for work that she had done. As to the significance of the invoice dates the witness stated that every time she went to the office there was an invoice; Mrs D-S presented an invoice in the file for her and the witness just input it. The last invoice the witness had received from the Respondent was in November 2009. [A sum of money was recorded against Mrs D-S's name on one of the schedules with the date 19 November 2009.]

67. **Mr Louis Lourdes** gave evidence as a character witness and confirmed the truth of his handwritten statement dated 21 February [2014] relating to his knowledge of the Respondent in the witness's professional capacity as a barrister and describing him as an "honest and a dedicated solicitor".

Findings of Fact and Law

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

(The submissions recorded below include those made orally at the hearing and those in the documents.)

69. Allegation 1.1: In relation to a claim for damages issued in the name of Baftas Solicitors LLP in breach of Rules 1.01, 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") sought to mislead the Court and the Defendant by:

(i) falsely claiming as "loss of earnings" lost fee income for two solicitors who had not done any work for the Respondent's firm on the relevant dates;

69.1 For the Applicant, Mr Steel went through the history of the Respondent's claim arising out of the flood at his premises which included a claim for loss of earnings expressed to be £28,000. When required by the Part 20 Defendant by way of a CPR Part 18 Request for Information to explain how he arrived at this sum, the Respondent responded:

> "£28,000 represents minimum estimated loss of income as a result of the accident over the four days including consequential loss detailed above
> Two partners at the time of the accident, [the Respondent], full time supervising partner at £250 an hour x 8 x 4 days, Mr [PG], part-time £120 per hour x 8 x 4, Violet De-Souza, Solicitor over eight years at the time £200 x 8 x 4, Mrs Okafor, solicitor consultant, £100 x 8 x 4, [AO], Secretary..."

Also in a document entitled "Schedule of Past and Future Loss" the Respondent expressed this part of his claim as follows:

"CONSEQUENTIAL LOSSES
Fee earners 22nd- 25th June 2009

Isaac Baffour	£250 an hour x 8 hours x 4 days	£8,000
[PG]	£120 an hour x 8 hours x 4 days	£3,800
Violet De-Souza	£100 an hour x 8 hours x 4 days	£2,000
Mrs Okafor	£100 an hour x 8 hours x 4 days	£2,000"

It was the Applicant's case that neither Mrs D-S nor Mrs O were working for B LLP between 22 and 25 June 2009. The Applicant's records indicated that Mrs D-S had been an assistant solicitor with B LLP until 31 March 2009 and that Mrs O had been a Consultant with B LLP until 27 February 2009. The Applicant also relied on their evidence to that effect. In a letter to the Applicant dated 18 April 2011, the Respondent asserted that they continued to work for him during the period of the flood on a freelance basis. He repeated this in a letter dated 31 May 2011 stating:

> "They would have been involved as fee earners. They could not because the premises and office rooms had been rendered uninhabitable and unsafe"

In a letter dated 28 December 2011, the Respondent suggested that the complaint against him was "disingenuous" and that Mrs D-S and Mrs O's "employment composition at the time had no baring (sic) on the issue of how much was claimed…". In a response statement to the Rule 5 Statement, the Respondent maintained that Mrs D-S and Mrs O's evidence was untrue. It was submitted for the Applicant that a solicitor must at all times be truthful in his dealings with the Court and opponents in litigation. In advancing under a statement of truth a claim for damages for loss of earnings that was false (and which he must have known was false in that it related to loss of earnings by solicitors over the period 22 – 25 June 2009 who were not in fact working for the firm), the Respondent had behaved in a way that was likely to undermine the proper administration of justice and failed to act with integrity in breach of Rules 1.01 and 1.02 of the Code respectively. It was further submitted that this behaviour was likely to diminish the trust the public placed in the Respondent or the legal profession in breach of Rule 1.06 of the Code

69.2 For the Respondent, Mr Khan submitted that central to the allegations and rule breaches was the claim arising for flooding of the premises on 22 June 2009 and the suggestion that part of the claim about earnings was inflated because two of the self-employed individuals were not there. Having heard the evidence of Mrs D-S and Mrs O and having seen the documents, the Tribunal could not be satisfied that these individuals were not present at the material time. Invoices and bills generated by both suggested that at or around the time they were there. As the Respondent had tried to expand on in evidence, his assessment of loss was not based on a pure calculation of what individual partners and other self-employed solicitors lost but on a sort of guesstimate based on what they would have earned over the period. It also related to

loss of repeat business in the manner in which he had calculated it and Mr Khan submitted that on the basis of that evidence the allegation was not made out.

69.3 In his evidence, the Respondent stated that the evidence upon which he relied to establish that Mrs D-S and Mrs O worked at the firm after they had left their association with him, was that of the bookkeeper Mrs PA but stated that she was not responsible for the bills; these were produced by the fee earner dealing with the matter. He stated that handwriting on particular copies of client ledgers, one showing Mrs D-S's name in capital letters and the other "OKAFOR + BAFFOUR" was his. He insisted that both solicitors were self-employed fee earners at the time of the flood and that Mrs D-S admitted in her statement that she came to the premises on 23 June. When asked about his estimated loss of fee income of £28,000, the Respondent stated that it represented the commercial value of the loss to the business; the claim was not about a claim for individual people or solicitors but a claim for loss suffered by the LLP. Business interruption and the commercial value of any business were different (from fee income) and the loss of income estimate was the method he employed to communicate the estimated commercial loss; the premises were unusable and clients did not come in, enquiries could not be taken because the telephone system was down; the electricity had to be turned off. The potential value of any client could be thousands of pounds in terms of repeat business and referrals. If the business of Tesco's had been interrupted for four days the commercial loss would be significantly different from what Tesco's would take on a daily basis. That was what he was trying to drive at. However he maintained that Mrs D-S and Mrs O were working for the firm on those days but could not do any work. As to Mrs D-S's witness statement in the County Court proceedings where she said: "I witnessed the incident regarding this claim on 23rd June 2009" and had not mentioned working on that day, the Respondent stated that the purpose of her statement was to confirm that the escape of water happened. The Respondent clarified for the Tribunal that he regarded the commercial value of a business as being way more than its turnover. It encompassed goodwill, and work in progress; goodwill alone was worth a substantial amount. As to why he had put four names in his letter of 21 June 2010 to BC LLP, the Respondent stated that they were all self employed solicitors for the firm at the time. As to the fact that in the letter the Respondent had estimated potential loss relating to the three room basement at £36,000 which he agreed was commercial loss from the non-functioning of the basement, and then in the same letter also referred to the basement rooms and repeated a reference to shelving plans to recruit three more fee earners, the Respondent stated that there were various heads of consequential loss to the business and material loss. The firm would have earned this money. These figures would be backed up by accountant's calculations. In the claim he did not use the figure of £36,000 in addition to £28,000; £36,000 was just a clarification giving more emphasis on the estimate of loss. The Respondent agreed that if the matter had advanced further i.e. gone to trial, he would have had accountants value the business and the matter had not been tried. The Respondent dismissed as "purely academic" the annual turnover figure of £1.7 million which BC LLP had projected from the four days of "loss" and had quoted in their letter of complaint to the Applicant dated 14 September 2010. The Respondent stated that the issue of turnover did not come into the equation. He was not just thinking of four days because most of the business premises remained ruined and that contributed to closing down the practice altogether: the four rooms in the basement were never used again; he had no money to deal with the damage. The consequential losses were a lot more than £20,000. He invested a lot into the business

and he lost everything. It was offensive to tell him that there should be an estimate of less when he lost a lot of money and his livelihood; he lost more than £28,000.

69.4 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The figure of £28,000 used in the High Court Particulars of Claim was described as loss of earnings and in the letter of 21 June 2010, it was described as: "£28,000 represents minimum estimated loss of income as a result of the accident over the four days including consequential loss detailed above". The letter went on to give detail including hourly rates for Mrs D-S and Mrs O. Regardless of whether Mrs D-S and Mrs O were working on the days in question, the Respondent accepted as a fact that his calculations totalling £28,000, of which his claim for their earnings was a part, were not a true reflection of their earnings but testified that it was his way of presenting estimated commercial losses. The figure was clearly not attributable to what it purported to be. Both Mrs D-S and Mrs O gave evidence that they were not working at the firm at the material time and Mrs D-S said she had come to the office and while there helped to deal with the flood. Mrs D-S gave a credible reason why she had attended the firm's premises; she had visited in order to obtain payment and to answer queries on existing files. Both individuals were credible witnesses; they were firm in their evidence about what they knew and about what they could not remember through the passage of time. Neither witness had a reason not to tell the truth. Continued use of reference numbers by other parties only indicated that they continued with references used when cases were started. The Respondent asserted that they would have worked and there would have been loss of earnings but such evidence as he produced was far from convincing that there was any work was done around the relevant period and it was even less convincing that there would have been work on the relevant days. The Tribunal did not dispute the evidence of the bookkeeper but she only knew what the Respondent had told her; she received invoices from the Respondent and not from Mrs D-S and Mrs O and she did not know when the work in question had been done. Furthermore the individuals had testified that they were paid only when a case completed and so the fact that the bookkeeper recorded payments to them after the dates when they stated that they had left the firm was not helpful to the Respondent. In the case of Mr MS, for whom work had apparently been done after the date when Mrs D-S said she had left the firm, there had been no one to take over the file and Mr MS was known to her socially and he had still rung her up and she had made an attendance note and given it to the Respondent. Mrs O had also given a credible explanation for visits to the firm after her departure. The Tribunal found as a fact that Mrs D-S and Mrs O were not working for the firm at the time of the June 2009 flooding. They did have a continuing association because they were entitled to receive money for work they had done previously. The Tribunal accepted their evidence in preference to that of the Respondent. The Tribunal found that the Respondent had made a false claim for losses in respect of their earnings. The Tribunal found allegation 1.1(i) proved to the required standard and that by acting as he had the Respondent was in breach of Rules 1.01 (rule of law), 1.02 (integrity) and 1.06 (public confidence) of the Code.

69.5 It was also submitted for the Applicant that the behaviour outlined in the Rule 5 Statement in respect of allegation 1.1, singularly or cumulatively was also plainly dishonest behaviour and Applicant maintained that both the objective and subjective tests in Twinsectra Ltd v Yardley [2002] UKHL 12 were made out.

69.6 For the Respondent, Mr Khan submitted generally in respect of the allegation of dishonesty in respect of allegation 1.1 that there appeared to be a failure of the Respondent fully to appreciate the legal position, and other issues might arise as a result of that, but not an issue of dishonesty.

69.7 The Tribunal considered that an informed and reasonable member of the public would consider the Respondent's conduct in presenting his claim as he had to the Court and the Defendant to be dishonest. The Respondent had asserted that his use of loss of earnings was a code for the inclusion of consequential loss but he had presented it as being a claim for loss of earnings in a calculated amount in his particulars of claim dated 15 July 2009 which bore a statement of truth and where there was a subheading "Loss of earnings £28,000" and in his letter of 21 June 2010 to BC LLP where he stated that £28,000 represent minimum estimated loss of income…" and went on to particularise it by reference to individuals giving detailed calculations and the Tribunal found that in doing this he knew that he was being dishonest. Accordingly the Tribunal found allegation 1.1(i) proved with dishonesty to the required standard.

70. Allegation 1.1(ii): falsely representing in an application to amend the Particulars of Claim dated 4 December 2009 that he acted on behalf of Baftas Solicitors LLP;

70.1 For the Applicant, it was noted that on 4 December 2009, the Respondent made an application on behalf of B LLP to amend the Particulars of Claim in his action against G University and P Properties Ltd. The Application contained a Statement of Truth and was signed by the Respondent as the applicant's solicitor in the action. However on 19 November 2009, the Respondent had submitted his application to the Applicant for approval to practice as a recognised sole practitioner which was dated 22 October 2009. It indicated that the date Respondent had left or expected to leave his previous firm was 22 October 2009 and that he wanted his new firm to start providing legal services from the same date. The application form warned the Respondent against providing false or misleading information to the Applicant and in signing the form the Respondent confirmed that the information in the form was accurate and complete the best of his knowledge and belief. In representations to the Applicant dated 15 March 2010, the Respondent asserted that B LLP had ceased trading on 25 November 2009 and that "Baftas Solicitors Sole Practitioner started trading on 26th November 2009 as per authorisation." He sent the Applicant a copy of a letter dated 25 March 2009 to the Registrar of Companies enclosing a DSO1 (striking off application by a company) form dated and signed by the Respondent on 25 November 2009. It was further submitted that the Respondent represented to the Court in the course of the striking out action on 27 October 2010 that he had been principal of "Baftas Solicitors Recognised Sole Practitioner" since 26 November 2009 and he also indicated that on the same date he had entered into an agreement with B LLP as set out in the background to this judgment. The Respondent also referred to the existence of this agreement in his statement dated 28 April 2011. Accordingly the Applicant alleged that in the application to the Court dated 4 December 2009, the Respondent purported to bring an application on behalf of B LLP in circumstances where approximately eight days previously he had signed a form seeking to dissolve the Claimant in the action; he had in fact been practising as a sole practitioner since before 26 November 2009 and must have known therefore that the LLP was defunct; and in any event on 26 November 2009 he claimed to have entered into an agreement with the LLP the

effect of which was to transfer any interest in the claim from B LLP to the Respondent. For the Applicant it was submitted that the importance of a statement of truth was explained in the notes to the CPR 22 as follows:

> "The justification for the requirement that a witness statement should be verified is obvious; it provides some guarantee that the statement is made with an honest belief as to the accuracy of its contents. There are two justifications for the requirement that a statement of case should be verified. First, if a party is required to certify their belief in the accuracy and truth of the matters put forward the statement of case is less likely to include assertions that are speculative and fanciful and designed to obfuscate… Secondly, in certain circumstances, a statement of case may be relied on as evidence. If it is to be used as such it is right that the facts asserted in it should be verified. The same can be said of facts asserted in a notice of application."

It was submitted that the Respondent's case was that at the time he made the application to the Court he had no knowledge that the LLP had been struck out. He appeared not to have responded to the point that, as a result of the agreement dated 26 November 2009, he must have been aware that B LLP had ceased to have any interest in the claim. District Judge Wakem rightly characterised the Respondent's behaviour as an abuse of process. The District Judge said:

> "I am going to strike out the claim on the basis that the claimant no longer exists, and I am going to refuse the claimant's application for [the Respondent] to be substituted as a claimant. Despite the bits of background that I have just filled in there, the basis of that decision is that since November of last year [2009] [the Respondent] has been representing himself as representing the claimant, Baftas Solicitors LLP, and it is only very late in the day that he has now said, "Actually, for the last 12 months near enough, I have been the claimant and I should be substituted." For want of a better way of putting it I think that is an abuse of process and I think that it shows scant regard for the rules in relation to statements of truth and, taking all that into account, I think it is not appropriate to substitute [the Respondent] as claimant."

It was submitted that such behaviour also represented a breach of any or all of Rules 1.01 (rule of law), 1.02 (integrity) and 1.06 (public confidence) of the Code.

70.2 For the Respondent, Mr Khan submitted that it was quite clear from the evidence that the Respondent was working under the umbrella of the LLP with Mr PG and that Mrs D-S and Mrs O were two solicitors who also worked at the LLP. The LLP was the right party to bring these proceedings. Mr Khan drew to the Tribunal's attention that the Respondent was one of the partners of the firm and a director of the LLP and so in that capacity he was fully entitled to bring proceedings. As matters progressed, towards the end of 2009 various partners parted company with the firm. A document was sent to the Applicant seeking permission for the Respondent to practise as a sole practitioner. It was dated 22 October 2009. There did appear to be a lacuna of little more than a month from 22 October 2009 to 26 November 2009 and this matter assumed significant importance because by the time the matter reached Court, the entity known as the LLP was in reality no longer in existence as far as The Law

Society [in reality the SRA] was concerned as they had allowed the Respondent in November 2009 to act as a sole practitioner. There was a quandary about how to proceed with the Court application and a degree of confusion. Clearly the LLP no longer existed and the Respondent was a sole practitioner. There was also a transfer of the assets of the LLP to the Respondent as a sole practitioner occasioned, he said, on 25 November 2009. So the reality was that the Respondent had an equitable interest in all of the assets and liabilities of the firm that had once traded as an LLP and in a sense the same person was wearing different hats. So when the Respondent came to sign various documents it was a confusion in his mind; clearly as a solicitor admitted to the Roll and allowed to practise as a solicitor, in what capacity did he continue the litigation? There was a genuine confusion on his part which he accepted and which could be gleaned from the fact that he made an application to be substituted as the Claimant which Mr Khan submitted indicated his bona fides in that respect. The Respondent was an ordinary high street solicitor; if he had instructed professionals to prepare the claim the confusion about the legal entity would have been resolved. He did not have an intention to mislead anyone and there was a genuine confusion on his part which was clear from the way he had answered questions during the hearing.

70.3 In his evidence, the Respondent stated that when he signed the Application notice dated 4 December 2009 as the applicant's solicitor giving the name of the firm as Baftas Solicitors he had meant Baftas Solicitors LLP. He had not at any point served notice to go on record as he would have had to do if he was acting for the LLP. He had crossed out the words "litigation friend", which left the words "Applicant's solicitor"; there was no other alternative and he did not cross out "solicitor" because he was a solicitor. He had signed as "Isaac Baffour". He took the same stance in respect of the original application in the High Court dated 30 September 2009; he was not the Claimant but a member of it and he was not the Claimant's solicitor. Any member could progress the claim for the LLP and a member had to sign for it. It was an oversight that had left "Claimant's solicitor" undeleted. As to the fact that at the time of signing the application dated 4 December 2009 he knew, as he stated in his response to the application for the wasted costs order that he had made an agreement dated 26 November 2009 to record the transfer of the benefit of the claim to him, it did not occur to him because he was going through so much and could not think clearly. There was no advantage to him personally and when he applied to be joined or be substituted in the County Court proceedings he would be liable for the costs in any event. All the assets of the LLP were his and he was a member of it and had no reason to misrepresent anything. He had made genuine mistakes.

70.4 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. He had given a multitude of explanations none of which was credible; one of these was that there had been an oversight. The Tribunal found as a fact that the Respondent had signed the application form as the Claimant's solicitor and he had struck out the other options on the form so it was not as if he had not thought about the matter. The form clearly stated that the Claimant's name was Baftas Solicitors LLP; the Respondent had completed the name of his firm as Baftas Solicitors and indicated that as a solicitor he represented the Claimant. The Respondent then stated that he had acted as a member of the LLP; if this was so, the Tribunal could not understand why he had completed the form as Baftas Solicitors and not given his own name. The Respondent had gone to considerable trouble to register himself as a sole practitioner with the Applicant before making this

application to the Court and signed on behalf of the sole practice so he clearly knew the difference between Baftas Solicitors LLP, Baftas Solicitors and himself. The Tribunal found allegation 1.1(ii) proved to the required standard and that by acting as he had the Respondent was in breach of Rules 1.01 (rule of law), 1.02 (integrity) and 1.06 (public confidence) of the Code.

70.5 The Tribunal had found as a fact that when the Applicant signed the application to amend the Particulars of Claim dated 4 December 2009 he knew that he was signing as Baftas Solicitors and not as the LLP. District Judge Wakem, when striking out the claim on 27 October 2010, referred to the fact that the Respondent's application on 26 September 2010 to be substituted as the Claimant stated: "Claimant's interest was transferred to [the Respondent], sole practitioner of Baftas Solicitors, on 26th November 2009…" The Tribunal found that the Respondent knew that he had applied dated 26 November 2009 to strike off the LLP and was practising as a sole practitioner so that his representations on the form were untrue. The Tribunal considered that for an officer of the court to file a pleading which he knew not to be true met the objective test in the case of Twinsectra. The Tribunal also found proved on the evidence to the required standard that in filing that pleading the Tribunal knew that he was behaving dishonestly as he was consciously making a false statement that he acted on behalf of an entity which he believed no longer to exist. Accordingly the Tribunal found allegation 1.1(ii) proved with dishonesty to the required standard.

70.6 Allegation 1.1 (iii): falsely representing in a statement dated 28 April 2011 that Baftas Solicitors LLP had operated until 25 November 2009 and/or he had practised in partnership until that date;

70.7 For the Applicant, Mr Steel submitted that in a witness statement containing a statement of truth approved and signed by the Respondent on 28 April 2011, which he had prepared in response to a wasted costs application against him by the Part 20 Defendant arising out of the action, the Respondent asserted amongst other things that:

> "The business of the LLP was conducted at the premises for approximately two years until, in November 2009, Mr [PG] and I resolved to separate. With effect from 26 November 2009 I began to practise as a sole practitioner trading as [B] Solicitors. My practising certificate for the year 2009-2010 refers. Mr [PG] continued to practise as a solicitor, on his own account trading as…. The last date on which we operated in partnership was 25 November 2009 and that was the last date on which the LLP transacted any business in its name."

The Respondent stated explicitly with effect from 26 November 2009 he was a sole practitioner and produced the practising certificate given to him on 26 November 2009 to prove it. Mr Steel submitted that at best this was a partial truth; it did not explain the Respondent's dealings with the Applicant and indeed the fact that in reality he had been practising as a sole practitioner since 22 October 2009 and that the Applicant had found that to be the case. The Applicant alleged that this account was clearly at odds with the representation contained in the Respondent's application to the Applicant dated 22 October 2009 which also contained a declaration that the content was accurate and complete. Both could not be correct. The RSP1 form was

sent to the Applicant under cover of a letter identifying the Respondent as the sole principal of "Baftas". As the decision of the Applicant's about the circumstances made clear, the use of this letterhead in advance of recognition indicated that the Respondent was practising without recognition and was in breach of Rule 12.01 of the Code. It was submitted that it was notable that at the time of signing the statement dated 28 April 2011, the Respondent must have been aware of the Adjudicator's decision dated 24 May 2010. It was axiomatic that a solicitor must never deceive or knowingly or recklessly mislead the Court, which the Applicant contended required the Respondent to be scrupulously accurate about the circumstances in which became a sole practitioner and about his dealings with the Applicant regarding the issue. The Respondent asserted that he had applied to Companies House for striking off the LLP but had done so on the wrong form with the effect that the LLP remained in existence until 14 September 2010 and that he was reminded of the continued existence of the LLP and its impending removal from the Register of Companies in September 2010 and applied to the Court to have his name substituted for that of the LLP in the Court proceedings on 26 September 2010.

70.8 For the Applicant it was also submitted in respect of the Respondent's assertion in his response to the Rule 5 Statement that he had his dates mixed up and that this was an oversight, that it was not entirely clear which dates he said were mixed up. It was the Respondent's contention throughout that the firm did not cease until 25 November 2009 and Mr Steel submitted either way it was remarkable that on 4 December 2009 he applied to act as the solicitor for the LLP, an entity that by that point he knew was defunct. Even more strikingly, in the course of the hearing on 27 October 2010 when his claim was struck out he represented to the Court as recorded in the judgment of District Judge Wakem that on 26 November 2009 he had entered an agreement with the LLP in which it agreed to transfer all beneficial interest in the legal advice business carried on at the LLP's address to him trading as Baftas Solicitors and that the Respondent had represented that this meant he was entitled to the benefit of the claim and that he should be substituted. In his witness statement dated 28 April 2011, he also stated that there had been an agreement dated 26 November 2009:

> "Upon the dissolution of the partnership, an Agreement was entered into between the LLP and my new sole practice, dated 26 November 2009. The principal object of this Agreement was to record the transfer of the clients' files, and ownership of the work-in- progress, and any unbilled fees. It was executed by Mr [PG] on behalf of the LLP and by me as a sole practitioner. There was no other document executed in respect of assets and liabilities of the LLP. The informal arrangement between Mr [PG] and me was that he simply withdrew from the LLP on the end date, without claim by either of us against the other. In that way I continued to regard my sole practice as having wholly replaced the previous LLP."

70.9 Mr Steel explained for the Tribunal the potential relevance of the date when the Respondent became a sole practitioner for his Court proceedings; there had been a dispute regarding his capacity to make the application of 4 December 2009. District Judge Wakem had referred to the issue in her judgment on 27 October 2010 and it might have been relevant to the application for the wasted costs order on the basis that he knew he was a sole practitioner and was advancing a claim on the basis of membership of the LLP when he knew that it did not exist.

70.10 It was submitted in respect of allegations 1.1 (iii) that the assertion made in the Respondent's statement dated 28 April 2011 to the effect that he had operated in partnership with Mr PG until 25 November 2009 was clearly false since he had applied to the Applicant for approval to practise as a sole practitioner from 22 October 2009 and stated in that application that he left the firm or ceased to be a member of it on 22 October 2009.

70.11 For Mr Khan's submissions for the Respondent see allegation 1.1(ii) above. In his evidence, the Respondent stated that he became a sole practitioner when the Applicant said that he could commence practising as one. The covering letter to the Applicant dated 19 November 2009 from Baftas Solicitors showing the Respondent as the Principal with no mention of Mr PG and enclosing his application for approval to practise as a recognised sole practitioner was sent by mistake, generated by computer. He agreed the signature was his. It was a genuine mistake that the form which showed the date 22 October 2009 in several places had gone to the Applicant. He had not however made a mistake about the date that he left his former firm which was also shown as 22 October 2009. Perhaps he had not read the document properly and not understood what it was saying because he had no reason to send a letter from Baftas Solicitors. What would he gain? He did not know and could not explain how he had come by the date 22 October 2009 or explain an earlier date which was crossed out throughout the document. His premises had been destroyed and he was in a state of chaos and confusion. The Respondent disagreed with the Applicant's Adjudicator's findings that he had practised unauthorised as a sole practitioner and he had not been sanctioned. His position was that it was a genuine mistake and although in his letter of 4 May 2010 to the Applicant he had categorically denied the charge, the Respondent stated that he had not deliberately practised as a sole practitioner. He stated that the suggestion that he was motivated by trying to avoid sanction for having applied late for recognition as a sole practitioner, was a fabrication. He had also made a genuine mistake in submitting the wrong form to Companies House to close the LLP. The Respondent rejected what Mr PG said in his e-mail to Bevan Brittan dated 10 January 2014:

> "As this is an old matter so I was not sure of the accurate date and therefore have just spoken to the SRA in this regard. The SRA confirm that the partnership was terminated on **26th November, 2009**. Albeit, from memory, I did not play any active role in [the Respondent's] practice (sic) many months before the official termination of the partnership and the reason was that I had my own law firm in ... London… at that time and was (sic) I based there."

The Respondent stated that Mr PG was actively involved in the LLP and was a partner in it until it closed. He did not send the Respondent correspondence about withdrawing from the partnership or write to Companies House. Mr PG was sometimes paid.

70.12 In his witness statement dated 13 December 2013 for these proceeding, the Respondent stated that he "had not kept track of dates or if I had I could not remember them..." and "It is entirely possible that at some point I may have mistakenly written or stated the wrong dates on an important document." The Respondent could not tell Mr Steel which documents he had made mistakes on save

the one which went to Companies House. He stated that what he had said in the response to the application for a wasted costs order quoted above to the effect that he practised from 26 November 2009 as a sole practitioner was his belief at the time. He relied on the date of his practising certificate 26 November 2009. He was realising his mistake on the form sent to the Applicant so he could not repeat it.

70.13 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Tribunal found as a fact that the Respondent submitted an application to the Applicant dated 22 October 2009 asking to be registered as a sole practitioner. In the application he stated that he would like his new firm to start providing legal services on that date and that the application arose as a result of a split in a recognised body partnership Baftas Solicitors LLP. The form contained a statement of truth and an acknowledgement that to give false or misleading information to the Applicant might lead to disciplinary action. In his statement dated 28 April 2011, the Respondent categorically stated that the business of the LLP was conducted for approximately two years until in November 2009 Mr PG and he resolved to separate. He said: "With effect from 26 November 2009 I began to practice as a sole practitioner trading as Baftas Solicitors". On the basis of the evidence the Tribunal found this to be a false statement. The Tribunal rejected the Respondent's explanation that he did not read or did not understand the form he sent to the Applicant giving the material date as 22 October 2009. Consideration had obviously been given to the use of that date as another, and what appeared to be an earlier date, had been deleted throughout the document. Also the Tribunal noted that in the section of the form relating to indemnity insurance, the Respondent had stated the period of cover to be 1 October 2009 to 30 September 2010. It did not accept the Respondent's assertion that the earlier date was simply the start of the insurance year, as no evidence was adduced in support of the contention that the insurance was backdated to cover a period when no insurance could have been needed (or possible) as on the Respondent's evidence at 1 October 2009 there was no practice to insure. The Tribunal also rejected the Respondent's reliance on the date of his practising certificate as a sole practitioner: 26 November 2009; based on the information he himself had given to the Applicant and on which the Adjudicator based his decision that the Respondent had practised as an unrecognised sole practitioner, the Respondent knew full well that he was practising as a sole practitioner before 26 November 2009. The fact that the Adjudicator did not choose to impose any sanction had no bearing on the facts. The statement dated 28 April 2011 represented the Respondent's attempts to avoid the imposition of a wasted costs order upon him; as the application related to his application of 4 December 2009 he was unlikely to have achieved that purpose and indeed did not do so but that did not negate the Tribunal's finding that he had signed a document with a statement of truth containing information which he knew to be incorrect. The Tribunal found allegation 1.1(iii) proved to the required standard and that by acting as he had the Respondent was in breach of Rules 1.01 (rule of law), 1.02 (integrity) and 1.06 (public confidence) of the Code.

70.14 The Tribunal found that by acting as he had, the Respondent met the objective test for dishonesty set out in the case of Twinsectra and that because of his clearly established state of knowledge of the true facts he had known that he was acting dishonestly when he made the false statement in question and that the subjective test was also satisfied. The Tribunal found allegation 1.1(iii) proved with dishonesty to the required standard.

71. Allegation 1.1 (iv): falsely representing in a statement dated 28 April 2011 that at no stage had he represented himself as the solicitor on record for the Claimant.

71.1 For the Applicant, Mr Steel submitted that in his witness statement dated 28 April 2011, the Respondent stated:

> "The claim was issued on 30 September 2009 by [B] LLP acting as a litigant-in-person. There was no solicitor acting for the LLP, and that situation has pertained subsequently. In particular I stress that at no stage did I represent myself as the solicitor on record for the Claimant, and no Notice of Acting was filed or served. It is my understanding that "wasted costs orders" are a sanction only to be applied to solicitors representing parties as solicitors on record, or to Counsel formally briefed. Accordingly, I do not consider that the present Application can be properly made against me, as I never acted in that capacity."

However, the Respondent signed the Claim form dated 30 September 2009 as the "Claimant's solicitor" and stated the name of the Claimant's solicitors firm as "Baftas Solicitors". In his letter to the solicitors for the Part 20 Defendant dated 21 June 2010, he had confirmed that the Claimant was a limited liability partnership (and by implication that he was not himself acting in a personal capacity). Further, the Application dated 4 December 2009 was again signed by the Respondent as the applicant's solicitor, giving the name of the applicant's solicitors firm as "Baftas Solicitors". The Applicant asserted that as a solicitor, the Respondent could not have been in doubt about the capacity in which he was signing statements of truth and it was clear from the correspondence that he and his firm Baftas Solicitors represented themselves as the solicitors acting for B LLP for a considerable time after he had apparently applied to dissolve the LLP. It was submitted that the assertion made in the Respondent's statement dated 28 April 2011 that he had at no stage represented himself as the solicitor on record for the firm was manifestly false and these were not merely mistakes by the Respondent but were advanced as facts to the Defendant and the Court to support his case that he should not be liable personally for an order for wasted costs as the statement evidenced. This behaviour represented a breach of any or all of Rules 1.01, 1.02 and 1.06 of the Code.

71.2 For Mr Khan's submissions for the Respondent, see allegation 1.1 (ii) above. In his evidence, the Respondent asserted that his response to the wasted costs order had been accurate when he said that "...at no stage did I represent myself as the solicitor on record with the Claimant ..." When the costs application came up, the applicant in the proceedings could not attack him on the basis that he was the solicitor for the LLP. His application had been made on the basis that he was not party to the proceedings. The Respondent rejected the suggestion that he had signed the claim form in the High Court dated 30 September 2009 as the Claimant's solicitor; his name was not Baftas. Any of the directors of the LLP could have brought the action on its behalf and the reason why the name of the Claimant's solicitor's firm was entered as Baftas Solicitors without the LLP was just that he was in haste.

71.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. In his statement dated 28 April 2011, the Respondent stated: "At no stage did I represent myself as the solicitor on record for

the claimant and no Notice of Acting was filed or served". However the Tribunal found as a fact that the Respondent had filled out forms as the Claimant's solicitor (see allegation 1.1(ii) above). The Respondent had a clear interest in denying that he had represented himself as the solicitor on record because it was clear from the statement that he believed this would protect him from a wasted costs order. On the basis of the facts which the Tribunal had already found proved, the Tribunal found allegation 1.1(iv) proved to the required standard and that by acting as he had the Respondent was in breach of Rules 1.01 (rule of law), 1.02 (integrity) and 1.06 (public confidence) of the Code.

71.4 Dishonesty was alleged in respect of allegation 1.1 (iv) and on the same basis as for allegation 1.1 (ii), the Tribunal found that the objective test for dishonesty set out in the case of Twinsectra was proved to the required standard and that having regard to the Respondent's state of knowledge when he made the false statement in the statement dated 28 April 2011 that he knew that he was acting dishonestly and that the subjective test was also met. Accordingly the Tribunal found allegation 1.1(iv) proved to the required standard with dishonesty.

72. Allegation 2.1: [The Respondent] did not retain deposit monies as stakeholder as required by the standard conditions of sale in breaches Rules 15 and 22 of the Solicitors Accounts Rules 1998 "**(the SAR**")

72.1 For the Applicant, it was submitted that contracts having been exchanged on 1 DW Avenue incorporating the Standard Conditions of Sale (Fourth Edition); the deposit was to be held by the seller's conveyancer as stakeholder on terms that on completion it was to be paid to the seller with accrued interest. Whilst it was not known whether the transaction would complete, the deposit money should not be paid to one party or another without the consent of both. The Applicant relied on for example Harington v Hoggart 109 ER 902:

> "A stakeholder does not receive the money for either party, he receives it for both; and until the event is known, it is his duty to keep it in his own hands… If the Plaintiff wished to vary that contract… it was his duty to procure the consent of the other party…"

It was submitted that the ledger demonstrated that the deposit monies were paid away in their entirety prior to completion. This was a breach of Rules 15 and 22 of the SAR. Although a number of the payments from client account were clearly made to Mr W on his instruction, there were a number of transfers to office account on account of profit costs prior to completion, the majority of which Mr W was not aware nor did he authorise. Mr Steel submitted that the Respondent's position regarding allegation 2.1 was equivocal. In his statement dated 3 October 2013 to the Tribunal he admitted the allegation. In his response to the Rule 7 Statement dated 12 November 2013, he indicated that the allegation was not admitted on the basis that Mr W had convinced the firm:

> "that he held the consent of the buyers to utilise and disburse the deposit monies to satisfy his liability to his landlord."

72.2 For the Respondent Mr Khan confirmed that the Respondent admitted allegation 2.1 but in mitigation he believed that Mr W had obtained the consent of the buyers to the release of the deposit but the Respondent only had his say-so; certainly there were no documents from the buyer's solicitors to consent to the money being disbursed in the way that it was, or that they were made aware that this was to be and was done.

72.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. After giving evidence for some time, the Respondent had admitted allegation 2.1. His original defence during the hearing, which became mitigation, was that Mr W had convinced him that the buyers had agreed to the release of the deposit. The Tribunal found that the Respondent had not produced any evidence to support his contention and it had not been put to Mr W during cross-examination. He had made an unparticularised assertion in respect of which he agreed that he had never approached the buyers' solicitors. Where it was agreed, as it almost always was, that the deposit in a conveyancing transaction was to be held by the solicitor for the seller as stakeholder it was a basic building block of the conveyancing system that the buyer's solicitor should adhere strictly to his/her obligation to safeguard the deposit by retaining it in client account - as stakeholder - until the transaction had completed. The Tribunal found allegation 2.1 proved to the required standard, indeed it was eventually admitted.

73. Allegation 2.2: [The Respondent] fabricated a letter purportedly from his client dated 5 May 2010 in breach of Rules 1.02 and 1.06 of the Code;

73.1 For the Applicant, Mr Steel submitted that Mr W accepted that he signed the authority dated 25 October 2010 authorising the firm to retain £10,000 from the sale proceeds and it was referred to in the determination of the Legal Ombudsman who ordered the return to him of all monies held by the firm save this £10,000. In respect of the authority dated 5 May 2010 which authorised the firm to retain £21,400 on account to discharge his legal costs, in his evidence Mr W diluted what he said in his statement; he accepted that the letter bore his signature or what looked like it. He did not have the original of the document and had never had it and he did not recognise the 5 May 2010 letter as an authentic letter. The Applicant's case rested on two bases; on the evidence of Mr W and the evidence demonstrated by the correspondence in that the Respondent was asked to produce the original of the 5 May 2010 document and could not do so in circumstances where the original file contained original authorities for other aspects of the transaction including the authority dated 25 October 2010. The Applicant wrote to the Respondent on 12 December 2011 raising amongst other matters, the fact that the file did not contain the original of the 5 May 2010 letter. In his response dated 12 November 2013, the Respondent stated:

> "We only have a copy of the letter on file and cannot produce the original as the original was sent to Mr Wright."

The Respondent had been offered the opportunity to inspect the original file prior to the hearing but had not done so. Mr Steel submitted that there was still a sufficient basis for a finding that the 5 May 2010 letter had been fabricated. It was submitted that the Respondent had acted in breach of Rule 1.02 of the Code (integrity) and Rule 1.06 (public trust).

73.2 For the Respondent, Mr Khan submitted that it had been put to Mr W when he gave evidence and he had in effect said that it was his signature on 5 May 2010 letter but he had no recollection of ever receiving it. Mr Khan left it to the Tribunal to determine the matter. He submitted that it was clear that this was Mr W's signature but he just could not remember if he had received the letter. Mr Khan submitted that the Tribunal would be hard pressed to conclude that the letter was a forged document. Mr Khan submitted that given the standard of proof, it could not be ruled out that there was an innocent explanation that Mr W signed and that he forgot about it and at one point Mr W was unsure. There was a course of dealing between the LLP and Mr W that went on for quite some time from his initial involvement with the firm regarding his matter with Barclays Bank. The bank had been seeking to enforce the charging order against his property and the firm managed to get him out of the litigation and the conveyancing came out of that. He had certainly signed one document in respect of the lesser sum of money which he clearly remembered. The Respondent categorically denied the allegation and stated that Mr W had clearly signed the authority letter. The Respondent did not recall the circumstances. He also stated that there was no need for Mr W to sign the authority because he the Respondent was entitled to his fee; this was just an additional measure.

73.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Tribunal had found Mr W to be a thoroughly honest witness. It did not consider that his qualification to his original witness statement when he came to give oral evidence was anything other than an attempt to be scrupulously honest and accurate in what he told the Tribunal. He was clearly puzzled by the uncanny likeness between the signature on the letter of 5 May 2010 and his signature but he was adamant that he had not seen the letter before and was even able to record the precise circumstances in Sydenham High Street during a mobile telephone conversation with his subsequent solicitor in which he first became aware of the letter. Mr W had a clear recollection of how reluctant he had been to sign the letter dated 25 October 2010 authorising the Respondent to retain £10,000 out of the sale proceeds and testified that he had only done so because the Respondent had told him that if he did not sign the letter he would not receive any money at all and had stated that his recollection that he had not received the 5 May 2010 letter was 100% correct. The Respondent asserted that he gave Mr W the original letter and that was why it could not be found upon the Respondent's file while by contrast the original letter dated 25 October 2010, in which Mr W gave the Respondent permission to retain a considerably smaller sum of money from the proceeds of sale of his property, was present on file. The Tribunal found that the Respondent had lied when he said that he had returned the original of the 5 May 2010 letter to Mr W. As to how Mr W's signature came to be upon the 5 May 2010 copy letter, the Respondent had in his possession the other signed original letter and the Tribunal was satisfied that the Respondent had found some way of transferring a copy of that signature to the 5 May 2010 letter. There was no need for the Respondent to obtain a letter in the terms contained; Mr W had testified and had not been challenged in cross-examination and the evidence supported that in May 2010 absolutely nothing was happening in the conveyancing transaction which required Mr W to be in contact with the Respondent at all; the Respondent was collecting rent from the buyers who had gone into possession and discharging Mr W's liabilities on the property; otherwise this was a completely dead period in the transaction. The Tribunal found as a fact that the Respondent had fabricated the letter purportedly from his client dated 5 May

2010. This was a clear lack of integrity such as would seriously undermine public confidence and therefore the Respondent was in breach of Rules 1.02 and 1.06 of the Code. Accordingly the Tribunal found allegation 2.2 proved to the required standard.

73.4 It was also submitted that the Respondent's conduct in respect of the letter was plainly dishonest and the objective and subjective limbs of the test for dishonesty in Twinsectra were met. Mr Steel submitted that it followed almost automatically that there had been dishonesty because there were no honest circumstances in which a solicitor fabricated a letter of authority from a client. The Tribunal found that fabricating a letter purportedly from a client to the effect that he owed the solicitor an increased amount of costs was dishonest to the objective standard. The Tribunal had noted the assertions by the Respondent in evidence that he was entitled to costs in any event such that he did not seem to think it mattered whether the letter had been fabricated. The Tribunal was also satisfied to the required standard that the Respondent knew that in fabricating the letter he had behaved dishonestly. Accordingly the Tribunal found allegation of 2.2 proved with dishonesty to the required standard.

74. Allegation 2.3: [The Respondent] failed to account to his client in full for completion monies in breach of Rules 1.02, 1.04 and 1.06 of the Code and Principles 2, 4 and 6 and Outcomes (1.1) and (1.2) of the SRA Code of Conduct 2011;

(The facts giving rise to allegation 2.3 closely related to those in respect of allegation 2.5 and there is some crossover in the judgment in respect of these allegations.)

74.1 For the Applicant, Mr Steel submitted in respect of allegation 2.3 that Mr W and his subsequent solicitor Mr JM had given evidence to the effect that following completion of the sale of 1 DW Avenue, Mr W was due a sum in excess of £37,000 (less the £10,000 that Mr W agreed could be retained.) In pursuit of his complaints, Mr W successfully complained to the Legal Ombudsman. The Recommendation Report produced by the Legal Ombudsman's investigator concluded that the firm had failed to account adequately for the fees it had charged. The firm was directed to return any further monies held in excess of the agreed figure of £10,000 to Mr W. The Legal Ombudsman had brought enforcement action against the Respondent, so far unsuccessfully. On 5 December 2013, the Respondent wrote to Mr W's solicitors offering: "… As a kind gesture I will give back all monies he [Mr W] paid the firm in respect of bill of costs." and the Respondent offered also to grant Mr W a charge over a property at 39 R Road "or indeed any other property" pending its sale. Thus the Respondent accepted that he should give all the money back and that he had failed to account in full. Mr Steel clarified for the Tribunal that there was some dispute as to the exact amount outstanding. In his statement Mr JM gave a figure which he had calculated with the assistance of Mr W ("something in the region of £27,548.36 from Baftas (i.e. the total amount of fees Baftas could retain.)..."). Mr Steel submitted that the Respondent's failure to return those monies and therefore not to account in full to Mr W for the completion monies constituted a breach of Rules 1.02, 1.04 and 1.06 of the Code and as the breach continued of Principles 2 (integrity), 4 (best interests) and 6 (public trust) and Outcomes 1.1 (you treat your clients fairly) and 1.2 (you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice) of the SRA Code of Conduct 2011.

74.2 (For the Respondent's evidence see also allegation 2.5 below.) The Respondent rejected the suggestion that he had failed to account to Mr W for the entirety of the completion money. The Respondent was entitled to his costs and was trying to settle the matter. As to Mr W saying that he had not expected the matter to cost more than £1,000, the Respondent stated that Mr W had said a lot of things, he had made contrary admissions and there was a question about whether this was just a conveyancing matter or whether he had come in with other instructions. He stated that Mr W admitted that he came on a litigation matter and that they had to manage his financial affairs and the tenancy which persisted. Regarding the client care letters, the Respondent confirmed that there was a standard client care letter on the firm's computer. Mr W had instructed the firm when it was an LLP and a letter had to be sent to him when the firm became a sole practice. The Respondent stated that he had not sent the letter dated 7 September 2009 to Mr W giving the £850 estimate with VAT at 15%: that letter was not on the Respondent's file and not been given to Mr W by the firm; the Respondent believed the letter was fabricated. The Respondent stated that clearly he had made the mistake in the two client care letters which were mistaken as to the rate of VAT which he stated was entered manually each time on the precedent letter. When questioned further, the Respondent stated that he could not remember whether VAT was part of the standard precedent letter. The VAT rate had been 17.5%, and had been reduced to 15% and had then gone back to 17.5%. The Respondent stated that he would have prepared the completion statement for Mr W as the fee earner but he denied that the completion statement including the reference to a Broker fee which was before the Tribunal was from the firm. Mr W had testified that the completion statement had been provided to him when the Respondent was not there and that a secretary or some other person had given it to him. The Respondent stated that a secretary would not do that. He believed that the completion statement had been fabricated and had never been on his file. It did not have any relevance to the cash book ledger prepared by the accountant.

74.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Tribunal had found the letter of 5 May 2010 to have been fabricated and accordingly Mr W was entitled to the return of the balance of the proceeds of sale of his property save for the amount of £10,000 which he had agreed by signing the letter of 25 October 2010 should be retained pending the resolution of his legal costs. Arguments had been raised in the documents by the Respondent that those costs extended more widely than the sale of the property but there was no evidence to support that assertion. In connection with this allegation and allegation 2.5 below, the Respondent had relied in evidence on a spurious defence that he and Baftas Solicitors were separate legal entities. The Respondent's defence was also that he had offered to pay by instalments and to return all the fees which Mr W had paid to him but he had not done either. It was now more than three years since the matter had been completed and the Respondent had not given any satisfactory explanation why the bill had not been costed. The bill that was delivered dated 1 March 2011 for £35,637.20 was not supported by any definitive completion statement. The Tribunal accepted Mr Steel's argument that Mr W was not obliged to accept instalment payment of money which was owed to him. The Respondent had said that he would sell a property and had stated in evidence that he owned four properties but he had provided no information about any such sale or how long it would take. Mr W was entitled to have his money back and to have the bill costed and any surplus returned to him. The Tribunal found that the Respondent's conduct

constituted a breach of Rule 1.02 (integrity), Rule 1.04 (best interests) and Rule 1.06 (public confidence) and Principles 2, 4 and 6 and Outcomes (1.1) and (1.2) of the SRA Code of Conduct 2011 and that allegation 2.3 was proved to the required standard.

75. Allegation 2.4: [The Respondent] provided a service to his client that was so poor as to amount to misconduct in breach of Rule 1.05 of the Code;

75.1 For the Respondent, Mr Steel submitted that Mr W's evidence, which was supported in all material respects by the Recommendation Report to the Legal Ombudsman dated 10 November 2011 demonstrated that the Respondent failed to provide a good standard of service to his client in breach of Rule 1.05 of the Code, as follows: he did not provide adequate cost information to his client; he did not provide adequate completion statements: he failed to pay monies to Mr W from the proceeds of sale contrary to the Legal Ombudsman's direction and he retained monies from the proceeds of sale in respect of fees incurred without notifying Mr W or seeking his authority. Further, Mr W indicated that he was required to remove a bankruptcy notice registered against the property as the Respondent failed to do so, despite this being a necessary step in order for the completion to take place.

75.2 For the Respondent, Mr Khan accepted that there were delays but this was a very protracted matter. Mr W had started as a litigant and then progressed to conveyancing and this was not a simple conveyance because the would-be purchasers were installed in the property under what appeared to be some form of short hold tenancy. The firm had done its best for the client; the property was properly conveyed, the charges were met. The only issue left was that of fees due to Mr W. The firm had done all it could to discharge its liabilities to its lay client and acted in his best interest, including discharging his liabilities and dealing with the rental of the property, its management and completion of the sale. In giving evidence, the Respondent completely denied that he had not provided anything approaching a good service to Mr W.

75.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The amount of costs in respect of the conveyancing transaction was referred to in three client care letters one of which was dated 7 September 2009 and which gave Mr W an estimate of £850 plus VAT at the rate of 15% which was then prevailing and which was signed by Mr W. The Respondent denied that this letter came from his office and instead relied on two other client care letters not signed by Mr W, both of which gave an hourly rate of £320 per hour and quoted an incorrect VAT rate of 17.5%. Mr W stated that he had not received those two letters. Mr Steel had produced an authoritative document which showed that VAT was levied at 15% from 1 December 2008 to 31 December 2009. The Respondent had given conflicting and confused accounts of how client care letters were prepared and the rate of VAT inserted in them. What was clear in the Tribunal's determination was that Mr W had not been provided with adequate costs information or an adequate completion statement. The Respondent had stated that he prepared the completion statements for conveyancing transactions which he conducted and he was the fee earner in this matter. He stated that he was out of the country when Mr W was provided with completion statement dated 11 November 2010 which included the "Broker fee" of £18,800 and that this was only a draft but subsequently in giving his oral evidence he repudiated the completion statement

completely and suggested that it had been fabricated and not come from his office at all. Mr W was provided with a bill dated 1 March 2011 amounting to more than £35,000 when he had originally been told that he would be charged £850 plus VAT. Mr W had also asserted in his statement, and this was not challenged in cross-examination, that in spite of instructions to the Respondent he had had to make his own arrangements for lifting a bankruptcy notice against him. Overall the Tribunal agreed with Mr Steel's submissions regarding this allegation. It found that Mr W had received appallingly bad service from the Respondent such as to constitute a breach of Rule 1.05 of the Code. The Tribunal found allegation 2.4 proved to the required standard.

76. Allegation 2.5: [The Respondent] failed to comply with a direction of the Legal Ombudsman in an open, prompt and cooperative way in breach of Principle 7 of the SRA Principles 2011;

76.1 For the Applicant, Mr Steel submitted that there could be no argument that the Respondent had failed to comply in an open, prompt and cooperative way with the Legal Ombudsman's direction on the basis of the facts. The Legal Ombudsman had been obliged to take enforcement action against the Respondent and the Respondent's letter of 5 December 2013 was proof that he had failed to comply with what was required. The Respondent stated that he made an offer to pay by instalments to Mr W's solicitors which was rejected without any reason. He said that he made subsequent offers to settle the matter which were ignored. He expressed the belief that the parties could come to an amicable settlement had Mr W solicitors "been a bit reasonable". Mr Steel submitted that Mr W was perfectly entitled to refuse to receive the return of what were in effect client monies by instalments. Further the Respondent was not in a position to negotiate; he was obliged to comply with the Legal Ombudsman's direction. He did not maintain contact with the Legal Ombudsman to the extent that the latter had been unable to serve the enforcement order on him as yet.

76.2 For the Respondent, Mr Khan accepted that the Respondent was bound by the finding of the Legal Ombudsman and he had not repaid Mr W money that he said he would. The Respondent had given reasons concerning financial difficulties and family problems but had to admit as a fact that the payment had yet to be resolved. As to the fact that the Legal Ombudsman worked to a different standard of proof the balance of probabilities, Mr Khan submitted that it was a matter for the Tribunal to determine. The Tribunal could decide afresh. The Respondent said that he did account to Mr W for monies but then there was the issue of him agreeing to refund the fees incurred of his own volition; he had agreed to reimburse Mr W for work done for him by B LLP and by B Solicitors. The Respondent had offered to deal with the matter as evidenced by his letters to Mr W's current solicitors and therefore Mr Khan asked the Tribunal to come down in his favour. In his evidence the Respondent initially rejected the findings of the Legal Ombudsman that he had failed to account and stated that the Ombudsman decided Mr W had an issue regarding additional monies aside from the £10,000 and for the time being monies should be given back to him. The decision was in relation to Baftas Solicitors which was closed at the time but the Respondent decided to deal with it substantively but he did not have a lump sum straightaway. The Respondent wrote to the Legal Ombudsman in response and offered to pay by monthly instalments of £1,700 and enclosed a cheque for the first instalment. Having read the first sentence of the Recommendation Report, "I have therefore concluded

that the firm have failed to account for the fees they have charged adequately", the Respondent stated that he had not read this part of the Recommendation Report before and he now accepted from doing so that the Legal Ombudsman had determined that there had been a failure to account. He rejected the suggestion that it had not been possible to decide what should be returned to Mr W because the file had not been costed; he stated that a bill of costs was raised and that Mr W could challenge it but in the interests of costs and time the Respondent had decided to give back every penny Mr W had paid him. He had not just recently made the offer; he had tried to resolve the matter on various occasions and met no engagement from Mr W's solicitors and that was the root problem without which this matter would have been resolved. The Respondent also stated that he never been aware of the court proceedings brought by the Legal Ombudsman and had never been a party to those proceedings. Also the Defendant was Baftas solicitors an entity that no longer existed. He agreed that he had been an unincorporated sole practitioner but rejected the suggestion that the firm was simply a trading name used by him and asserted that it was a separate legal entity. He accepted only that while the firm traded all obligations remained with him. How would orders be enforced against that non-entity, how would orders be enforced against him personally, people did not call him "Baftas Solicitors" if he was walking down the road. However he was taking full responsibility and addressing the matter but it was not the legal position. He would be deceiving the public if he said he was Baftas Solicitors. He did feel an obligation to Mr W but he, the Respondent was entitled to his costs. The Respondent stated that he had not been in touch with the Legal Ombudsman since he wrote on 25 May 2012 but thought that Mr W's solicitors would have told them of his letter of December 2013. As to his assertion that Mr W's solicitors had not engaged, it was suggested to him that he could send them a cheque for the amount owing but the Respondent stated that he did not have a cheque to send; he had not had a job for two years and he was trying to sell assets. He said he could not even find related files and did not have the money to pay a costs draughtsman to draw the bill. The Respondent stated that he could not fail to comply if he did not have the means to comply.

76.3 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Tribunal was aware that the Legal Ombudsman made determinations based on the balance of probabilities but the Tribunal found proved to the required standard in this Tribunal, beyond reasonable doubt, that the Respondent had an obligation to account to Mr W for all the proceeds of sale of 1 DW Avenue over and above the amount of £10,000 which by the letter that he had agreed he had signed dated 25 October 2010 could be retained pending resolution of costs. The Respondent had relied in giving evidence on a defence that he had no legal obligation to Mr W because the Respondent and Baftas Solicitors were separate legal entities notwithstanding that the Respondent was a sole practitioner trading under that name and that it was out of goodwill and kindness that he was offering to return the fees Mr W had paid. The Tribunal found this a deeply unattractive argument and without foundation and noted that the Legal Ombudsman took enforcement proceedings against him trading as Baftas Solicitors as evidenced by a letter from the Ombudsman to the Respondent dated 4 July 2013. The Respondent accepted during evidence, having first disagreed with the Applicant's interpretation of the Ombudsman's decision that he had been directed to return money in excess of £10,000 to Mr W and to have his bill costed and that he had done neither. One of his assertions in evidence was that he could not be held to have failed to

comply with the order of the Legal Ombudsman if he did not have the money to do so, an approach which the Tribunal totally rejected. It might be a reason for failure, but that was not the point of the allegation. It was undisputed that what the Legal Ombudsman had required the Respondent to do had not been done. The Respondent also relied on his offer to pay in instalments and that he would sell one of his four properties but there was no evidence that he had made any effort to do that and there was no obligation on Mr W to accept instalment payment. The Tribunal found the Respondent in breach of Principle 7 of the SRA Principles 2011 (comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner) and that allegation 2.5 was proved to the required standard.

77. Allegation 2.6: [The Respondent] failed to fulfil undertakings given to WS Solicitors within a reasonable time or at all in breach of Rule 10.05 of the Code; and

Allegation 2.7: [The Respondent] provided misleading or inaccurate information to WS Solicitors by stating that he held redemption statements to all the charges over 1 DW Avenue, when he did not, in breach of Rule 1.02 of the Code.

(These allegations were considered together as they arose out of related facts.

77.1 For the Applicant, Mr Steel submitted that the Respondent had given undertakings in letters of 3 and 8 November 2010. Although the wording of the letter of 8 November 2010 was odd, it was clear that the Respondent undertook to discharge the five charges listed upon receipt of the full completion funds and to release the transfer deed to WS Solicitors on receipt of full completion funds. Further the letter clearly represented that at the time of writing the firm held up-to-date redemption statements on all the charges listed in the letter and that the net proceeds of sale were sufficient to redeem the charges. The Respondent did not in fact have a redemption statement for the equitable charge dated 5 June 2007 to Barclays Bank and it was understood that he accepted that he did not at the time of sending the letter. Ms SS, the recipient of the undertakings gave evidence that she relied upon the Respondent's two letters of 3 and 8 November in proceeding to completion on 10 November 2010. It was submitted that the only possible inference was that she was misled. The Respondent subsequently produced two further letters dated 8 November 2010 which purported to qualify the undertakings given in the earlier letter of 8 November 2010 and made representations to the effect that he did not have a redemption statement for the Barclays charge. There was apparently no dispute that Ms SS did not receive the latter letters dated 8 November 2011. The Applicant asserted that in any event it must have been obvious to the Respondent from WS Solicitors' letter of 25 November 2010 and EJ Solicitors' letter of 9 December 2010 that the other parties were proceeding on the basis of the original undertakings set out in the first letter of 8 November 2010. It was also submitted that there could be no real dispute that the undertakings were breached. The transfer was not sent to WS until 22 November 2010 while completion had taken place on 10 November 2010 and notwithstanding the question of the Barclays Bank charge dated 5 June 2007, the Respondent's own letter of 16 December 2010 made it clear that funds in respect of the equitable charge dated 11 November 2008 in favour of C Limited were not remitted to the charge holder until 6 December 2010 and similarly payment was not made in respect of the equitable charge dated 27 October

2007 in favour of HSBC Bank plc until 6 December 2010. The purchasers were prevented from acquiring good title to the property for a period in excess of three months. It was submitted that the evidence demonstrated the Respondent's failure to comply within a reasonable time or at all with the undertakings given to WS Solicitors in breach of Rule 10.05(2) of the Code. If as the Respondent asserted, he intended to give different undertakings to those in fact given, he failed to ensure his release from the original undertakings or ensure that WS Solicitors was notified that the original letter of 8 November 2010 was inaccurate despite the fact that it must have been clear to him from WS Solicitors' letter of 25 November 2010 that they were acting on the basis of the original undertakings. This was a breach of Rule 1.02 of the Code.

77.2 For the Respondent, Mr Khan submitted that a bank had held up the matter for three months. The Respondent stated that he had redemption statements from various entities, which were out of date by completion and so he had not dealt with the matter expeditiously. His first undertaking letter looked like a computer-generated letter in the language that solicitors use for undertakings. Once the charges were paid off one would expect discharge would be done in a day or so but in mitigation the Respondent said he took a lot longer because of various issues.

77.3 In giving evidence the Respondent was referred to his response to the Rule 7 Statement where he denied allegation 2.6 and stated: "No time limit within which my undertaken (sic) will be discharged was stated in my undertaken." As to the reference in the undertakings that all financial charges would be redeemed upon receipt of completion funds, the Respondent stated that it was a simplistic understanding that this would occur on 10 November when those funds were made available and he thought that within three months would be a reasonable time because one could encounter difficulties with lenders and he did. The Respondent did not concede that he had not sent the transfer to WS Solicitors on 10 November 2010; he stated that they demanded the transfer by fax before they received the funds but he did not have a copy either of the demand for the transfer or his fax. The last of the completion monies had been received on 10 November and the Respondent did not consider that sending the transfer on 22 November constituted a delay; the post could take some time to arrive. The Respondent stated that it was prudent to hold onto the transfer until full funds had been received. He would not hold onto the transfer once funds were received. Perhaps there been some delay in the post or regarding his instructions to his secretary. He must have misunderstood the questions he had been asked as there were too many of them. He maintained that he had provided the transfer deed.

77.4 As to the redemption statements (allegation 2.7) and the fact that three charges had not been redeemed until after the completion date of 10 November 2010, the Respondent stated that he had redeemed them as soon as practical and all the charges had been removed from the property. In respect of the fact that he had written to the solicitors acting for C Ltd on 16 December 2010 expressing concern that following transfer of redemption funds on 6 December he had yet to receive an executed form DS1 and a similar letter dated 6 December to another firm of solicitors acting for HSBC sending them a form DS1 for execution and referring to the transfer of redemption funds by CHAPS to them that day, the Respondent stated that the buyers kept breaching the completion date and so it was necessary to keep going back to the lenders to refresh the statements and this had contributed to the delays. It was not his fault that he had not redeemed all the charges on completion date 10 November 2010.

He agreed that this implied that at some point he did have "fresh" figures. The Respondent stated that he did not have evidence of this with him but could provide it. The Respondent maintained that the letter he wrote on 8 November 2010 to WS Solicitors detailing the charges and confirming receipt of up-to-date redemption statements on all of them was accurate notwithstanding that he also maintained that he had sent two further letters on the same date correcting it; he had been in constant communication with Barclays because they (he on behalf of Mr W) had been paying down that charge. He sent the further letters because he did not want WS Solicitors to be under any illusion because he was seeking to get Barclays to refresh the redemption statement and he sent the subsequent letters to change the undertakings so that time would be given for the updated statement from Barclays to arrive. He denied that he was not in a position to complete; the completion date had been breached so many times. He denied that he misled WS Solicitors in any way, shape, or form. In the shorter of the two additional letters dated 8 November 2010 to WS Solicitors he forgot to refer to any [existing] redemption statement when he said that his firm had "particulars and claim form regarding charge which stated the balance outstanding including interests"; the letter was assuring Ms SS that his firm knew how much was outstanding and that there was no risk of any kind to her client's interests. The Respondent confirmed to the Tribunal that he thought it was usual to pay off mortgages on the day of completion if it was expedient to do so. At the time he was dealing with Mr W's matter he had to travel because of family emergencies and bereavements. (The Respondent testified that his father had died and prior to that he was the main child taking care of him and was going back and forth to Ghana). Subsequently there had been deaths of other close relatives.

77.5 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Tribunal considered that the undertakings which the Respondent had given to WS were quite clear and obliged him, upon receipt of full completion funds, to redeem all financial charges on the property, and without delay. By his letter dated 3 November 2010 and by his letter of 8 November 2010 he confirmed that he was in receipt of up-to-date redemption statements on all the charges that he detailed in the letter and that the net proceeds of sale were sufficient to redeem them. By his own evidence the Respondent believed that he had up to three months to effect redemption. He gave evidence that he had sought to obtain redemption statements in early December and admitted that he did not have up-to-date redemption statements for all the charges at completion but asserted he had earlier had them but because of delayed completion they had gone out of date. When he gave the undertaking on 8 November 2010 that the net proceeds of sale were sufficient to redeem the charges he could not possibly be sure that he could do that as he did not have all the redemption statements. The Tribunal agreed with Ms SS when she stated in evidence that the Respondent was not in a position to complete and should not have given the undertakings. The Tribunal found Ms SS to be an impressive witness and found as a fact that she did not receive the two additional letters dated 8 November 2010 which the Respondent stated that he had sent to her firm to vary the undertakings. Whether or not the Respondent had sent these letters, his reliance on them showed that he did not have the redemption statements when he gave the original undertakings and proved that the undertakings were not correct. The Tribunal found that the Respondent knew that the contents of the undertakings were inaccurate and misleading and indeed Ms SS had been misled

for she had stated that she would not have completed the transaction as she did if she had understood the true position. The Tribunal accepted her evidence.

77.6 In respect of allegation 2.6, the Tribunal found that the Respondent had been in breach of Rule 10.05 of the Code by failing to fulfil undertakings given to WS Solicitors within a reasonable time or at all. Reliance on solicitors' undertakings was a cornerstone of successful conveyancing and the Respondent showed scant regard for them. The Tribunal found allegation 2.6 proved to the required standard.

77.7 In respect of allegation 2.7, the Tribunal found that in providing misleading and inaccurate information to WS Solicitors the Respondent was in breach of Rule 1.02 (integrity) of the Code and that allegation 2.7 was proved to the required standard.

Previous Disciplinary Matters

78. None

Mitigation

79. For the Respondent, Mr Khan applied for an adjournment to another day in order to consider mitigation. The Tribunal did not consider that it would be appropriate to adjourn the matter; it had spent a considerable amount of time considering its findings; the Respondent had made certain admissions during his evidence and there had been ample opportunity during the recess for him to give Mr Khan full instructions without prejudice to any decision which might be made by the Tribunal. The Tribunal did not consider that there would be any unfairness to the Respondent in proceeding with the hearing. Serious matters had been found proved against the Respondent and the Tribunal did not consider that it was in the public interest to delay its decision. While Mr Khan accepted that the light of the Tribunal's findings one might reasonably expect a suspension and acknowledged that there was a risk that the Respondent might be struck off, he asked the Tribunal to bear in mind that the Respondent had five children, two of whom were very young; he was the main support of the family. Were the Tribunal to consider a financial penalty, as he had stated during evidence, the Respondent had several properties but had to bear the costs of the action which had been struck out and he also faced a financial penalty from the Legal Ombudsman which Mr Khan asked the Tribunal to take into account. Although the Tribunal had found the Respondent to have been dishonest, Mr Khan submitted that his conduct went more to competency than dishonesty. A strike off would deprive him of his livelihood. In respect of the allegations concerning Mr W's transaction, Mr Khan submitted that in dealing with the deposit in breach of his obligations as a stakeholder, the Respondent had shown a degree of naiveté in agreeing to his client's request to release the money and he had obtained no pecuniary advantage by doing so. As to the delays in complying with the undertakings, Mr Khan submitted that all the charges on Mr W's property had been discharged. In respect of the decision of the Legal Ombudsman, the Respondent had offered to settle although he knew that he had not done so.

Sanction

80. The Tribunal had regard to its Guidance Note on Sanctions, to the mitigation made and to the character evidence given on behalf of the Respondent. The Tribunal had found the Respondent to be a thoroughly unreliable witness and whenever there was an issue between his evidence and the evidence proffered for the Applicant it had rejected his version for the reasons set out in this judgment. On occasion he had given several different versions of his defence and then defaulted to stating that he had made a mistake or there had been an oversight. The Tribunal had found him to be guilty of calculated dishonesty in two separate and unrelated situations. It had been suggested to the Tribunal that the Respondent had not derived any financial gain from what he had done but the Tribunal did not agree. Mr W had been kept out of his money and was still being kept out of a considerable amount of it. It was well established that the most serious misconduct involving an allegation of dishonesty would almost invariably lead to striking off save in exceptional circumstances. The Tribunal had noted the difficult personal circumstances which the Respondent had described involving a series of family bereavements but the Tribunal had to have regard to the guidance in the case of Bolton v The Law Society [1994] 1 WLR 512 where it had been said that a solicitor:

> "can often show that for him and his family the consequences of striking off or suspension would be little short of tragic.… All these matters are relevant and should be considered. None of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness... The reputation of the profession is more important than the fortunes of any individual members."

The Tribunal was particularly concerned that the Respondent had shown no insight into his misconduct and they considered that this made him hazardous to the public. He also displayed a worrying general approach characterised by a lack of integrity in respect of his duties to the Court and the public and had shown that he put his own interests before those of everyone else. His fabrication of a document demonstrated that the essential respect for professional ethics which was necessary in any solicitor were lacking in this Respondent. The Tribunal considered whether an indefinite suspension might be appropriate but having regard to his lack of insight it did not consider that there was a realistic prospect that he would recover or respond to retraining so that he no longer represented a material risk of harm to the public or to the reputation of the profession and it did not consider that his personal mitigation was so truly compelling and exceptional as to make a strike off unjust. The Tribunal determined that otherwise there were no exceptional circumstances as envisaged in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). Accordingly the Tribunal determined that the Respondent should be struck off.

Costs

81. For the Applicant, Mr Steel applied for costs in the amount of £44,164.44. He submitted that this case had been more protracted than usual, (the matter having been set down trial in June 2013 but then adjourned because of issues about serving the Respondent). Mr Khan accepted that the matter had come before the Tribunal on two

occasions for a substantive hearing and that there were significant numbers of documents however he did feel that the amounts of time charged for perusal of those documents was somewhat inordinate. Otherwise the costs seemed reasonable. The Tribunal noted that all the allegations had been found proved against the Respondent who had made just one very late admission during the course of the proceedings. The Tribunal was not surprised at the amount of time to peruse the documents having regard to there being an allegation, which had been found proved, that one document had been fabricated. The Tribunal summarily assessed costs in the amount sought. The Tribunal had regard to the fact that by striking off the Respondent it was depriving him of his livelihood but the evidence it had available was that he had considerable capital assets and accordingly it determined that an immediately enforceable award of costs would be appropriate.

Statement of Full Order

82. The Tribunal Ordered that the Respondent ISAAC AGYEMANG BAFFOUR, 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 in fixed in the sum of £44,164.44.

DATED this 1st day of April 2014
On behalf of the Tribunal

J. Astle
Chairman