SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11047-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TERENCE JAMES SYNNOTT Respondent

Before:

Miss N. Lucking (in the chair)
Mr P. Housego
Mr M. C. Baughan

Date of Hearing: 28-29 October 2013,
13-14 January 2014 and 29 May 2014

Appearances

Katrina Wingfield, solicitor of Penningtons Manches LLP of Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

The Respondent appeared on 29 October 2013, and 13-14 January 2014. The Respondent did not appear on 29 May 2014. The Respondent was represented throughout the hearing by Paul Parker, Counsel, instructed by Clyde & Co Solicitors LLP, 3140 Roan Place, Oxford Business Park, Oxford, OX4 2WB.

JUDGMENT

Allegations

1. The allegations against the Respondent were:

1.1 The Respondent acted in breach of the Solicitors Accounts Rules 1998 ("SAR") in particular:

a) Rule 15(1) – use of client account

b) Rule 22 – withdrawals from client account

c) Rule 19(2) & note x – receipt and transfers of costs

d) Rule 32 (9) – accounting records

e) Rule 34 – production of records

1.2 The Respondent acted in breach of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct ("SCC").

1.3 The Respondent acted in breach of Rules 20.05 and 20.08 of the SCC.

1.4 It was alleged the Respondent had acted dishonestly.

The Respondent admitted allegations 1.1(d) and 1.1(e).

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 23 August 2012 together with attached Rule 5 Statement and all exhibits
- Chronology
- Skeleton Argument dated 23 October 2013
- Witness statement of Peter Charles Beddoes dated 23 August 2013 together with all exhibits
- Witness statement of Rachel Whatmore dated 22 May 2012
- Witness statement of Terrence John Carter dated 9 August 2012 together with all exhibits
- Applicant's Schedules of Costs dated 6 January 2014 and 21 May 2014
- Application to Recall the Respondent dated 8 April 2014

Respondent:

- Witness statements of the Respondent, Terence James Synnott, dated 3 July 2013, 7 October 2013, 25 October 2013 and 16 May 2014 together with all exhibits
- Respondent's Skeleton Argument dated 23 October 2013
- Respondent's Bundle of Authorities
- Various fee notes from DP & Co, Counsel, a statement of costs dated 27 March 2006 and a Bill of Costs in the matter of Mr and Mrs Carter (Produced on 29 October 2013)
- Respondent's Response to the allegations (provided on 14 January 2014)
- A number of character references
- Respondent's Submissions on the SRA's Application to Recall the Respondent dated 7 May 2014
- Respondent's Schedule of Estimated Costs dated 23 May 2014

Preliminary Issues

Application for an Adjournment (28 October 2013)

3. On 28 October 2013, the first day of the substantive hearing, due to adverse weather conditions which caused the widespread cancellation of trains, two of the Applicant's witnesses, as well as the Respondent and his Counsel, were unable to attend the hearing. One witness for the Applicant was able to attend the hearing as she had travelled to London the previous evening. The Tribunal heard from both Ms Wingfield, on behalf of the Applicant, and Ms Foster, the instructing solicitor on behalf of the Respondent. They openly and fairly explained their respective difficulties to the Tribunal.

4. Ms Wingfield indicated she would prefer the hearing to commence on the second day listed for the hearing, 29 October 2013, if possible. She explained the difficulties that she had with one witness, who was in ill health, and intended to return to Spain later in the week where he would spend the winter months. Ms Wingfield requested that witness be permitted to give his evidence on 29 October 2013 so that he could be released. It seemed likely that a further day would be required as the substantive hearing would not complete in one day.

5. Ms Foster explained that her Counsel had left North England on the morning of 28 October 2013 by train. Due to a tree on the line his train was terminated at Peterborough and he was advised by station staff to return to North England. The Respondent had also started his journey very early that morning but, having reached Reading, he was told his journey could not continue and he therefore returned to Devon as he was unable to stay in Reading overnight. Both the Respondent and his Counsel had been informed that if the hearing could proceed on 29 October 2013, then they must attend which would mean they would have to catch the same trains again the following day. There was some concern about whether the train lines would

be open. Ms Foster confirmed the Respondent intended to give evidence at the hearing.

The Tribunal's Decision

6. The Tribunal was mindful that one of the Applicant's witnesses had travelled some distance on a previous occasion when the hearing had been adjourned, and it would be unfortunate to have to adjourn the hearing again. That witness was not in good health and, although he was in the United Kingdom now, he intended to return to Spain later in the week for the rest of the winter. Although the Tribunal would have preferred to start the substantive hearing earlier on 29 October 2013, given the potential travel situation, the Tribunal agreed to defer the start of the hearing until 10am on 29 October 2013 and indicated the witness who wished to return to Spain could give his evidence on that day.

7. As it was likely that the case would not complete on 29 October 2013, the Tribunal requested all parties to provide details of their availability to the Tribunal's Listing Manager by 4pm on Wednesday 30 October 2013 in order that a further hearing date could be listed as soon as possible. In particular, the Tribunal requested the Respondent's Counsel to bring details of his available dates with him on 29 October 2014 so that the additional hearing day could be listed before Christmas 2013 if possible.

Applicant's Application to Clarify the Applicant's Case on Allegation 1.1(b) and Dishonesty (13 January 2014)

8. At the start of the hearing on 13 January 2014 Ms Wingfield informed the Tribunal that there had been some correspondence, during the intervening period since the last hearing in October 2013, between the parties. On 19 November 2013 Ms Wingfield had written to the Tribunal to state that, although she had closed her case on 29 October 2013, at the start of the hearing on 13 January 2014, she intended to clarify which sub-clauses of Rule 22 of the SAR she relied upon. The Respondent had objected to this. The Applicant therefore requested permission from the Tribunal to clarify its case.

9. Ms Wingfield stated that in July 2013 she had been asked to clarify a number of issues but Rule 22 had not been raised at that time. Shortly before the hearing in October 2013, Ms Wingfield stated she had been asked for further clarification but there had not been much time to deal with this, as her Skeleton Argument had been served a few days before the hearing in October 2013, and witness statements had been served 21 days before that hearing. Ms Wingfield stated the Respondent had been notified in November 2013 of Ms Wingfield's intention to clarify the position concerning Rule 22 and that there was no prejudice to the Respondent in her doing so today. Ms Wingfield stated that she relied on the case as pleaded which was clear.

10. Mr Parker, on behalf of the Respondent, submitted that if Ms Wingfield were permitted to clarify further at this late stage, she would effectively be introducing a new allegation which had not been pleaded. The Respondent had specifically requested clarification of which conduct was alleged to be dishonest and which was not. The Applicant had also been asked to clarify specifically which breaches of the

Solicitors Accounts Rules were alleged. The Applicant's response had been that breaches of all the Rules listed in the allegations were alleged. In light of that correspondence, the Respondent's statement had been drafted accordingly. There was no reference to Rule 22(1)(a) or Rule 22(1)(b) which the Applicant now indicated she was relying upon. These specific rules were not dealt with in the Respondent's statement and nor did Mr Parker cross-examine the Applicant's witnesses on their basis.

11. Mr Parker submitted that if Ms Wingfield were permitted to provide the Tribunal with further clarification and make reference to Rules 22(1)(a) and 22(1)(b) specifically, then a new issue arose concerning the status of monies in the case concerning Mrs W which had not previously been alleged. The Respondent had replied, both in his witness statements and in his Skeleton Argument, to the case that he thought he was required to meet. This did not deal with any issues concerning the status of monies but dealt only with Rule 22 on the assumption that the allegation related to the question of permission to withdraw the money for costs. Having received the Skeleton Argument, the Applicant had not confirmed or denied that the assumption made by the Respondent was incorrect. Furthermore, Mr Parker submitted the Applicant's case had been opened without making any reference to this assumption, and Mr Parker had been allowed to cross-examine witnesses based upon it. Only after the Applicant had closed her case did it appear that the assumption had been wrong and that she now claimed to rely upon the status of the monies.

12. Mr Parker submitted the Respondent should know precisely the case he has to meet and that dishonesty must be properly particularised. The Tribunal was referred to a number of authorities which provided guidance on the degree of specificity required in Rule 5 Statements. In Thaker v The Solicitors Regulation Authority [2011] EWHC 660 (Admin) LJ Moses had stated:

> "64….. The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or a Rule 4 statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies. …..
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> 65. If the Rule 4 statement alleges that Mr Thaker knew or ought to have known certain matters, the facts giving rise to that actual or constructive knowledge should also be set out. Once the Rule 4 statement has set out the primary facts asserted, it should then set out the allegations which are made on the basis of those primary facts. The person who drafts the Rule 4 statement should heed the guidance given by this court in Constantinides in relation to pleading dishonesty. In a complex case such as this the Solicitors Disciplinary Tribunal needs to have a coherent and intelligible Rule 4 statement in order to do justice between the parties."

13. In the case of Constantinides v The Law Society [2006] EWHC 725 (Admin) LJ Moses had stated:

> "In order to analyse the challenge to the Tribunal's findings of dishonesty it is necessary to identify the way the case was put against the appellant in

> paragraph 2 of the Rule 4 statement ….. We should stress that we do not consider that the allegations of dishonesty were clearly and properly made in the Rule 4 statement. The Rule 4 statement, after alleging conduct unbefitting a solicitor, should have identified that conduct and stated with precision in relation to each aspect of the allegedly guilty conduct the respects in which it was said to be dishonest. It should have alleged that when the appellant acted, despite the conflict of interest, that the conduct was dishonest by the ordinary standards of honest behaviour and that he knew that he was transgressing the ordinary standards of honest behaviour …….”

14. Mr Parker also referred the Tribunal to the case of Re Lo-Line Electric Motors Ltd [1988] 2 All ER 692 in which it had been held that natural justice required that a director facing disqualification should know the charges he has to meet and if the Official Receiver wished to change the nature of the allegations on which he intended to rely, he must give the director prior notice of the new allegations. Mr Parker submitted that in this case the nature of the allegation had not been clearly identified and so the evidence had not been properly directed towards it. He stated the Applicant had closed its case and was now seeking to shift its position. Mr Parker submitted it was now too late for the Applicant and it must rely on the Rule 5 Statement to which the Respondent had replied.

15. Ms Wingfield in response indicated that the submissions she had now heard from Mr Parker were unexpected. She stated that her Skeleton Argument made it perfectly clear at paragraph 13 that the money did not belong to the client, Mrs W. She submitted this had always been the Applicant’s case and that accordingly the Respondent had not been entitled to take money owed by Mr D from those funds. She submitted she had not put the case differently. The Rule 5 Statement at paragraph 16 stated that as completion did not take place, the money, which had been received for the purpose of purchasing a property, could not subsequently be used for another purpose. This was the basis upon which the Respondent’s conduct was alleged to be dishonest. Ms Wingfield submitted the Applicant’s case had always been put on this basis and had not changed.

The Tribunal’s Decision

16. The Tribunal had considered carefully the submissions of both parties, the evidence from the Applicant and the documents provided. Ms Wingfield, on behalf of the Applicant, now made an application to clarify an allegation in the Rule 5 Statement, having closed the case for the SRA at the last hearing on 29 October 2013. The Tribunal had heard evidence on that date from a number of witnesses including Ms Rachel Whatmore concerning the transaction involving Mrs W. Those witnesses had then been discharged.

17. The Tribunal considered Rule 22 of the Solicitors Accounts Rules 1998. The Rule stated as follows:

> “(1) Client money may only be withdrawn from a client account when it is:
>
> a. properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held;……

b. properly required for payment of a disbursement on behalf of the client or trust;
c. properly required in full or partial reimbursement of money spent by the solicitor on behalf of the client or trust;
d. transferred to another client account;
e. withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by the solicitor to the client in writing;
f. a refund to the solicitor of an advance no longer required to fund a payment on behalf of a client or trust (see rule 15(2)(b));
g. money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) – see paragraph (4) below; or ……..
h. money not covered by (a) to (g) above, withdrawn from the account on the written authorisation of the Solicitors Regulation Authority….."

18. The Tribunal also considered the Rule 5 Statement and in particular paragraph 16.1 which contained the Applicant's submissions on behalf of the SRA that the Respondent's conduct had been dishonest. The Tribunal noted that paragraph 16.1 did not state that Mrs W's money did not belong to the "client". Paragraph 13 of Ms Wingfield's Skeleton Argument stated:

> "The Applicant notes however that the money did not belong to his 'clients'."

This was mentioned as a note and was not specifically linked to the allegation of dishonesty. The actual allegation 1.1(b) itself stated simply:

> "Rule 22 – withdrawals from client account".

19. The Tribunal reminded the parties that the Respondent was required to meet the allegations as set out in the Rule 5 Statement and it was not for the Respondent to have to interpret those allegations. Rule 22 was a lengthy rule and the Rule 5 Statement did not specify which parts of Rule 22 were relied upon.

20. The Tribunal was mindful that the Respondent had sought clarification of the case against him many months ago and had specifically requested clarification of which breaches of the SAR's listed in the Rule 5 Statement were alleged. Furthermore the Respondent's Counsel, at paragraphs 8 and 9 of his Skeleton Argument dated 23 October 2013, had made it clear how the Respondent had interpreted the allegation of his breach of Rule 22. He stated he had assumed that the crux of the allegation against him in relation to Mrs W was that he withdrew client money without the client's permission to do so. The Applicant had known this was the Respondent's position for many months.

21. Rule 22(1)(a) contained two elements - whether the money could properly be taken, and whether the money belonged to a client, and if so, which client. It was not for the Respondent to have to decide which element he was alleged to have breached. Rule 22(1)(e) referred to monies withdrawn on the client's instructions which had been

confirmed in writing. The clarification Ms Wingfield now sought to make amounted to an additional allegation, which the Respondent had not had the opportunity to deal with in his preparation for this case, his statements and his Counsel's questioning of the witnesses for the SRA.

22. Accordingly, the Tribunal refused Ms Wingfield's application and decided that the case would be dealt with on the basis of the allegations as set out in the Rule 5 Statement and, as responded to on the assumption contained in paragraph 9 of the Respondent's Skeleton Argument based on Rules 22(1)(a) and (e).

Applicant's Application to Recall the Respondent (29 May 2014)

23. Ms Wingfield, on behalf of the Applicant, had submitted an Application dated 8 April 2014 to the Tribunal to recall the Respondent. This application had been made after the Tribunal had heard closing submissions from the Respondent's Counsel, Mr Parker, on 14 January 2014, and after the Tribunal had already retired and started to deliberate. During his closing submissions, Mr Parker had drawn the Tribunal's attention to a failure on the part of the Applicant to specifically put to the Respondent during cross-examination, that he had acted dishonestly as alleged. Mr Parker's submission was that in the absence of this being put to the Respondent, the allegation of dishonesty failed as the Respondent had not been given an opportunity to deal with it. Some time after the Tribunal had retired on 14 January 2014 to deliberate, Mr Parker provided the Tribunal, through the Clerk, a copy of The Mayor and Burgesses of The London Borough of Haringey v Samantha Abigail Hines [2010] EWCA Civ 1111, as the authority for the principle to which he had referred during his submissions on this point.

24. The Tribunal reconvened the parties on 29 May 2014, partway through its deliberations, in order to consider the application made. Ms Wingfield referred the Tribunal to the submissions contained in her application. In that application Ms Wingfield confirmed that she had only received a copy of the case of The Mayor and Burgesses of The London Borough of Haringey v Samantha Abigail Hines during the course of the afternoon on 14 January 2014 after the Tribunal had retired and had not therefore been able to address the Tribunal on it. In her application Ms Wingfield accepted she did not specifically put to the Respondent, in cross-examination, that he acted dishonestly in relation to the matters of Mrs W and Mr and Mrs Carter. However, the Rule 5 Statement clearly set out the allegation of dishonesty and indeed, the Respondent had dealt with the issue in both of his witness statements dated 3 July 2013 and 7 October 2013. Dishonesty was also dealt with in the Applicant's written Submissions and in the Respondent's Skeleton Argument.

25. In her application, Ms Wingfield reminded the Tribunal that the SRA acts in the public interest and that it was in the interests of justice for the Tribunal to exercise its discretion and recall the Respondent so that the alleged dishonesty could specifically be put to him, thereby correcting the defect. Ms Wingfield relied on the case of R v Wilson [1977] Crim LR 553 in which it was held on appeal, that the Judge's duty was to exercise his discretion in a way he thought most advantageous to justice, bearing in mind that justice included the interests of both the defendant and the prosecution.

26. Ms Wingfield also relied on the case of R v Seigley [1911] 6 Ct App R 106 in which it was held that a prisoner was liable to be recalled like any other witness once he had made himself a witness. Ms Wingfield also referred to the cases of R v Sullivan [1923] 1 KB 47 and Phelan v Back [1972] 56 Ct App R 257. In R v Sullivan the judge recalled witnesses after the defendant had given evidence and his Counsel had made his closing speech to the jury. In the appeal on Phelan v Back it was held that a Recorder could allow evidence to be called after the normal point at which such evidence would be excluded if the interests of justice required it if the Recorder in his discretion considered it appropriate.

27. At the hearing on 29 May 2014 Ms Wingfield stated she had been unaware that she had not put the allegation of dishonesty to the Respondent and only realised later. She also confirmed she had not been aware of the decision in The Mayor and Burgesses of The London Borough of Haringey v Samantha Abigail Hines. She accepted that the Tribunal had retired and started to deliberate but her understanding was that a decision had not yet been made. Ms Wingfield confirmed the SRA had offered to meet the costs of the Respondent's travel expenses for today's hearing, should her application be successful. Ms Wingfield submitted her failure to cross-examine the Respondent on dishonesty was a technical defect and she asked the Tribunal to exercise its discretion in the interests of justice to allow her to recall the Respondent. She confirmed that she only intended to ask about four further questions relating specifically to dishonesty.

28. Mr Parker, on behalf of the Respondent, referred the Tribunal to his written submissions in response to the application. He stated that the Respondent was not in attendance that day (29 May 2014) but could attend the following day if required to do so, particularly as both 29 and 30 May 2014 had been set aside for this hearing.

29. Mr Parker submitted that the power to recall a witness was discretionary and should only be exercised if the interests of justice so demand and/or the public interest so demands. He submitted the Applicant had not made an application to recall the Respondent, immediately after hearing his closing submissions and that the case of The Mayor and Burgesses of The London Borough of Haringey v Samantha Abigail Hines had only been provided to the Tribunal after the Tribunal had asked Mr Parker a question regarding authorities. Mr Parker had not immediately had the case to hand and produced it as soon as he could. However, that case was an old authority and contained the basic principle that dishonesty must be put to a Respondent. The fact that the SRA's advocate was not aware of the case did not amount to exceptional circumstances. Furthermore, Mr Parker submitted that after he had made his closing submissions, Ms Wingfield had submitted to the Tribunal that her cross examination had implied that the Respondent had been dishonest and that this was sufficient.

30. Mr Parker submitted that no new matters had come to light during the Respondent's evidence, and there had been no unforeseeable event such as to merit the recalling of additional evidence. Mr Parker submitted there were no exceptional circumstances which required the Tribunal to exercise its discretion. The Tribunal had already retired to consider its verdict and different rules were now in play. Mr Parker submitted the public interest was not enough to allow the Tribunal to exercise its discretion otherwise whenever a mistake was made by a regulator, the regulator would always have a complete opportunity to rectify that error. Mr Parker reminded

the Tribunal that the Respondent had been trying to pin down the Applicant to confirm precisely what was alleged to be dishonest behaviour for some considerable time prior to the start of the hearing. Mr Parker submitted there had been a degree of vagueness and inaccuracy in the SRA's case.

31. Mr Parker stated that the Respondent did not accept there had been an oversight or technical failure by the Applicant's advocate. She had conducted her cross-examination at length, there had been no question of ambush and indeed, dishonesty had been a central issue to this case from the very outset. The trial had started in October 2013 and had still not concluded in May 2014. If the Respondent was cross-examined further, there was an issue about how much longer the case would take. The Respondent had been here, ready to deal with dishonesty and indeed had provided written responses to this allegation. Whilst it was accepted that the Tribunal had a discretion, that had to be exercised in very narrow parameters which did not exist in this case. Mr Parker submitted there would be prejudice to the Respondent if he were to be recalled. There would be further delay, additional costs would be incurred and also his new evidence would then have to be considered alongside the evidence the Tribunal had already heard over four months earlier.

32. Mr Parker referred the Tribunal to a number of cases including R v Day [1940] 40 Cr App R 79, Webb v Leadbetter [1966] 1 WLR 245, Jolly v DPP [2000] Crim LR 471, Leeson v DPP [2000] RTR 385, Malcolm v DPP [2007] 1 WLR 1230 and Tuck v Vehicle Inspectorate [2004] EWHC 728 (Admin) to support the Respondent's submissions. He drew the Tribunal's attention to the relevant passages in each of those cases.

The Tribunal's Decision

33. The Tribunal had considered carefully the submissions of both parties and all the documents provided. The Tribunal made it clear at the very outset that it did not accept the proposition made by Mr Parker that an allegation of dishonesty automatically failed if it was not put to the Respondent. The Tribunal was of the view that this could not be an overarching rule and it was necessary for any Tribunal to consider the facts of each individual case. There were instances where allegations of dishonesty were made and respondents either did not appear before the Tribunal, or chose not to give any evidence at all. On such occasions the Tribunal could draw inferences depending on the facts of each individual case and there could be no prohibition on a finding of dishonesty being made where an allegation of dishonesty had not been put to a respondent in cross-examination.

34. The Tribunal then considered the specific facts in this case. The Tribunal was particularly mindful that it had retired on 14 January 2014 and had already spent half a day deliberating. On that occasion, after Mr Parker had made his closing submissions, Ms Wingfield had not made an immediate application to recall the Respondent before the Tribunal retired.

35. The Tribunal considered carefully all the cases to which it had been referred. It noted that in the cases relied upon by Ms Wingfield, the circumstances in which a witness was recalled were slightly different from the circumstances before the Tribunal today and could therefore be distinguished. In R v Seigley and in R v Wilson, the defendant

was recalled to be cross-examined on previous convictions. In R v Sullivan, witnesses were recalled to deal with new matters. In Phelan v Back a witness was recalled to assist the Recorder on material points of detail which the Recorder could not recollect.

36. The Tribunal then considered the cases relied upon by the Respondent. Lord Parker CJ stated in Webb v Leadbetter:

> "..it does seem to me that there must always be some residuary discretion in the court to allow, in particular circumstances, evidence to be called, but the manner in which that discretion is exercised must depend upon the stage of the case. ….. it has now become an established rule of law that no evidence can be called after the summing-up, and a judge who sought to exercise his discretion by allowing evidence to be called at that stage would be acting entirely wrongly and the conviction would be quashed.
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> …… ….as a general rule and in the absence of some special circumstances, it would certainly be wholly wrong for the justices to purport to exercise a discretion to allow evidence to be called once they had retired, and indeed probably after the defence had closed their case."

37. The Tribunal further noted that dishonesty was a central allegation in this case. It had been alleged at the outset and indeed responded to in the Respondent's own documents. This was not a new matter, nor was it a technical omission as was the position in Jolly v DPP. The Tribunal concluded that the Applicant had already had sufficient opportunity to deal with the dishonesty allegation in cross-examination and there were no special circumstances which justified the Tribunal exercising its discretion to recall the Respondent at this late stage, after the Tribunal had already spent half a day deliberating.

38. Whilst the Tribunal was acting in the public interest, it was also required to have regard to the Respondent's right to a fair trial and any prejudice that might be caused to the Respondent if he were recalled. The Tribunal did not accept that there was prejudice to the Respondent in terms of delay. The case had already been adjourned once in July 2013 on the Respondent's application so any delay from July to October 2013 had been caused by the Respondent himself. The delay from October 2013 to now had been no party's fault and had been caused by a combination of the adverse weather and the availability of all parties, and their representatives when re-listing. Nor did the Tribunal accept that there would be any prejudice to the Respondent in respect of costs. The parties were all required to attend Court today in any event and the Respondent could make an application for costs relating to this application in due course.

39. The Tribunal did, however, accept that there could be some prejudice to the Respondent if he was required to give fresh evidence over four and a half months after concluding his evidence in January 2014, so that the later evidence would then need to be interleaved with the earlier evidence. The Tribunal concluded there were no special circumstances in this case to justify the exercise of the Tribunal's discretion to recall the Respondent after it had already retired to deliberate. Notwithstanding this decision, the Tribunal made it clear that it would still consider

the issue of dishonesty based on the submissions made by both parties, the evidence it had heard and the documents provided. The Tribunal then retired to continue with its deliberations.

Factual Background

40. The Respondent, born in March 1959, was admitted to the Roll on 15 January 2002. At the material time the Respondent was practising on his own account under the style of TMJ Solicitors ("the firm") from 5 Notre Dame Mews, Northampton, NN1 2BG. He did not hold a current practising certificate.

41. On 19 January 2010, the firm was intervened following notification from the Legal Complaints Service ("LCS") that clients had been unable to contact the Respondent and the firm's office appeared to be closed. When an Investigation Officer from the Solicitors Regulation Authority ("SRA") visited the firm's office on 12 January 2010, he found it was closed and apparently empty, although a pile of unopened post was visible. Attempts were made to contact the Respondent but these were unsuccessful and on 15 January 2010 an Adjudication Panel resolved to intervene into the firm.

42. The Intervention Agents produced a report concerning the firm which identified concerns relating to a number of matters. The Intervention Agents had obtained access to the firm's offices with the assistance of the landlords but there was no trace of files or papers. A Court Order was obtained to search the premises but no papers were found. A further Court Order was obtained to require the Respondent to assist and on 29 June 2010 he appeared in court. Subsequently the Respondent met with the Intervention Agent and the notes of that meeting suggested up to 100 boxes of files and papers had gone missing and accounting records held on computer had been stolen.

43. The SRA authorised an inspection of the firm's books of account and other documents. The relevant notice of inspection was sent to the Respondent's last known home address and emails were also sent to the email address provided to the High Court. However, the Respondent failed to make contact with the SRA Investigation Officer, who produced a report dated 9 November 2011.

44. As the Intervention Agents had been unable to locate accounting records or client files, it was not possible to calculate total liabilities to clients. Three specific client matters were identified which gave rise to concerns that insufficient client money was held by the firm at the time of the intervention.

<u>Purchase of Property for Mrs W</u>

45. The Respondent was instructed to act on behalf of Mrs W in or about November 2008 concerning the purchase of a property for £1.6 million. A third party, Mr D, assisted Mrs W providing instructions to the Respondent and facilitating a loan advance of £1,585,000 by B which was incorporated in the Republic of Panama. According to a letter from the Respondent to Bank JB dated 20 February 2009, B was a trust vehicle for Mr D's daughter.

46. Other documents suggested that Mr D was connected with a purported banking and finance business, AC, who had an address in Canada Square, Docklands. The Respondent's firm had however established that Mr D was disqualified as a director and appeared to have made an online Suspicious Activity Report to SOCA on or about 23 January 2009.

47. On 21 January 2009, a payment of £40,000 was received from M Ltd. The following day on 22 January 2009, a further payment of £40,000 was received, again from M Ltd. Contracts on the purchase of the property for Mrs W appeared to have been exchanged on 29 January 2009 and a deposit in the sum of £74,000 was sent to the vendor's solicitors. Completion was due to take place 28 days later but did not occur.

48. On 17 February 2009 the sum of £1,584,985 was received from B. A Statement of Account on the file showed the sum of £1,584,976.50 as being the sum required to complete. This figure included VAT and other disbursements, including Stamp Duty Land Tax ("SDLT") of £62,000 and Land Registration Fees of £700, neither of which would have been payable as the transaction did not complete.

49. On 21 January 2009 the sum of £2,059 was transferred from the client to the office bank account and on 30 January 2009 a further sum of £3,200 was transferred. At the date of intervention, 19 January 2010, £1,508,370.09 was held on deposit account.

50. During the interview with the Respondent on 8 July 2010, the Intervention Agent asked the Respondent about the remaining £85,726. The Respondent indicated that sum was for fees and disbursements and other advice given in addition to the conveyancing. He confirmed the file had been passed to the Crown Prosecution Service and declined to answer any further questions. Most of the money was returned to investors following a Court Order. Mr D was sentenced to 11 years in prison in relation to a number of frauds and attempting to launder £1.5 million through purchasing a property.

Mr and Mrs Carter Litigation

51. Following his appointment, the Intervention Agent was approached by Mr and Mrs Carter who indicated they had been awarded costs by the Court of Appeal in the sum of £36,000 in a successful neighbour dispute action. They stated this sum was due to them, save possibly for £5,000 for the cost draftsman, as they had funded the litigation throughout. However they stated that nothing had been paid to them and they had submitted an application to the Compensation Fund.

52. It was not possible to reconstruct the client ledger but the SRA Investigation Officer considered the entries on the client bank account statements identified as "Carter" commencing on 2 July 2008. The firm's bank statements showed a number of round sum transfers from client to office bank account described as "Carter".

53. The sum of £35,794.92 was credited on 3 June 2009 from "The B Partnership" which appeared to be the payment of the costs referred to by Mr and Mrs Carter. A further sum of £121.23 was credited on 24 June 2009. The majority of entries were described as "Carter Fees" and were round sums. All apart from £10,000 transferred on 24 March 2009 were transferred to the firm's office bank account.

54. On 19 December 2008, the sums of £500 and £6,000 were transferred to the office bank account at a time when the office account was overdrawn. On the same day three payments totalling £5,560 were paid out which appeared to have been for staff salaries, including the sum of £4,000 to “TJS”. On 23 December 2008, the sum of £2,140 was credited to the office bank account and on the same day a payment in the same sum was made to “Law Society PC”.

55. Mr and Mrs Carter had made a claim to the Compensation Fund. The Respondent, when asked about this matter during his interview with the Intervention Agent on 8 July 2010 stated that invoices rendered to the clients had not been paid and he was entitled to keep the sum of £35,794.92.

Purchase of a Property for Mrs E

56. The Respondent was instructed to act on behalf of Mrs E on the purchase of a property. The Intervention Agent received a letter from the Royal Bank of Scotland (“RBS”) dated 26 July 2010 indicating their Charge over the property had not been registered. It appeared the client had not paid monies to cover the payment of stamp duty prior to completion.

57. Further enquiries with RBS’s solicitors established that RBS had provided a mortgage advance of £150,370 into a bank account in the Respondent’s personal name. The Respondent had failed to pay stamp duty or register the title or the lender’s Charge. RBS then instructed other solicitors to obtain £1,880 for stamp duty from the client and complete. Subsequently confirmation was received that the purchase and Charge had been registered.

Witnesses

58. The following witnesses gave evidence:

- Peter Beddoes (Intervention Agent)
- Rachel Whatmore (SRA Investigation Officer)
- Terrence John Carter
- The Respondent, Terence James Synnott

Findings of Fact and Law

59. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

60. Allegation 1.1: The Respondent acted in breach of the Solicitors Accounts Rules 1998 (“SAR”) in particular:

a) Rule 15(1) – use of client account
b) Rule 22 - withdrawals from client account
c) Rule 19(2) & note x - receipt and transfer of costs
d) Rule 32 (9) - accounting records
e) Rule 34 - production of records

60.1 The Respondent had admitted Allegations 1.1(d) and 1.1(e) and the Tribunal found those allegations proved on his admissions.

60.2 The Respondent had also admitted he had breached Rule 15(1) of the SAR but only in relation to the transaction he had dealt with on behalf of Mrs E. The Respondent had accepted on this matter that, by allowing the lender to pay mortgage funds into his personal bank account on 12 November 2009, he had breached Rule 15(1) of the SAR.

60.3 The Applicant's case was that the Respondent had also breached Rule 15(1), Rule 22 and Rule 19(2) in relation to the matters he had dealt with on behalf of Mrs W and Mr and Mrs Carter.

60.4 The Tribunal considered carefully the various Rules referred to. Rule 15(1) of the SAR stated:

> "Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary…."

60.5 Rule 22 of the SAR was set out earlier in this judgment. Rule 19(2) and note (x) stated:

> "19(2) A solicitor who properly requires payment of his or her fees from money held for a client or trust in a client account must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.
> ……….
> (x) Costs transferred out of a client account in accordance with rule 19(2) and (3) must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs will be a breach of the rules."

<u>Mrs W Purchase</u>

60.6 The case of Mrs W concerned a transaction involving the purchase of a property for £1.6million. The instructions had come from Mr D (who it later turned out was a fraudster) in about November 2008. The Respondent had been introduced to Mr D through a mutual acquaintance and understood he was the head of a multi-million pound investment fund, AC. As well as assisting Mr D with the property purchase for Mrs W, the Respondent had also been appointed to advise him on various other business matters for which the Respondent said he had agreed with Mr D an annual retainer of £150,000. The Respondent's case was that a significant amount of time was devoted to this work and that he had not received payment when promised as he had been told by Mr D that his funds were "tied up abroad".

60.7 A Statement of Account found on the client file showed £1,584,976.50 was required to complete. This included £1,950 for costs and £62,000 for the payment of SDLT, and £700 for Land Registration fees.

60.8 On 21 January 2009, the sum of £40,000 was received into client account from M Ltd. The following day, on 22 January 2009, a further sum of £40,000 was received again from M Ltd. On 17 February 2009, funds of £1,584,985 were paid into client account from B, which had loaned this amount to Mrs W.

60.9 Contracts for the purchase were exchanged on 29 January 2009 and a deposit of £74,000 was paid to the seller's solicitors. Completion, however, did not take place.

60.10 On 21 January 2009 the sum of £2,059 was transferred from client to office account. On 30 January 2009, a further £3,200 was transferred from client to office account. The Respondent transferred the sum of £1,500,000 to a deposit account on 2 April 2009. At the date of intervention, 19 January 2010, £1,508,370.09 was held in a deposit account. It was not clear what had happened to the balance of £85,726.

60.11 Ms Wingfield, on behalf of the Applicant, had submitted the Respondent had breached Rule 15(1) because he had not retained the sum of £85,726 in his client account when this money belonged to the client, Mrs W. Although the Respondent had indicated he had taken this money for fees and disbursements for advice given on other matters as well as for acting on the purchase of the property, there were no invoices or files or documents to support his assertion. Ms Wingfield further submitted the Respondent had breached Rule 19(2) and Rule 22 of the SAR by withdrawing those funds from client account in the absence of a bill or written notification of costs being given to the client before the costs were taken.

60.12 The Tribunal heard evidence from Mrs Whatmore in relation to the file she had been given by the police. She stated she had not seen any client care documentation, other than a Terms of Appointment document which was not addressed to anyone specific but indicated the Respondent's hourly rate of £250. Ms Whatmore did not recall seeing any invoices or any signed authority from Mrs W authorising Mr D to act on her behalf.

60.13 Ms Whatmore was unable to explain the figures given on the contract for the purchase of the property and could not provide the Tribunal with any further information regarding M Ltd which had made the two payments into the client account in the sums of £40,000 each on 21 and 22 January 2009. Ms Whatmore referred the Tribunal to the Statement of Account which indicated the fees on this case were £1,950 plus VAT of £292.50. She confirmed that although two round sum transfers were made from the client to the office account on 21 January 2009 in the sum of £2,059 and on 30 January 2009 a further sum of £3,200, she had not seen any invoices for either of those amounts.

60.14 The Respondent, in his witness statement dated 3 July 2013, said that the property transaction had involved Mrs W, Mr D and an off-shore company. Mr D had informed the Respondent that the property was to be converted to operate as a "spiritual retreat" in partnership with Mrs W and that Mr D would be a sleeping partner. The instructions were to purchase the property in Mrs W's name and record an agreement that Mr D was the beneficial owner of the property. Funds received into the client account for the purchase came from companies apparently connected to Mr D. The Respondent stated that Mr D had requested conveyancing costs be kept to a minimum and all extra work was to be charged to him.

60.15 In his witness statement the Respondent stated he had become uneasy about Mr D due to the delays in the transfer of funds and became concerned that he was perhaps not what he appeared to be. The Respondent had therefore filed a SOCA report but received no response. After exchange of contracts but before completion of the purchase the Respondent had filed a second SOCA report and had then been advised by the police not to proceed. Mr D was subsequently arrested and eventually sentenced to 11 years having pleaded guilty to fraud. The Respondent stated that he had advised the seller's solicitors of Mr D's arrest and had placed the balance of the purchase funds on special deposit. The Respondent stated the conveyancing file was given to the police and he did not have a copy.

60.16 In his second witness statement dated 7 October 2013 the Respondent accepted he had informed Mr Beddoes during his interview that the work done had not been limited to this transaction and the sum of about £85,000 was for fees and disbursements for other advice as well. The Respondent stated in his witness statement that he had drafted a large number of corporate documents for Mr D including employment contracts, and he had given advice on corporate structures, bond issues and trust matters. He said that from early November 2008 to late February 2009, he had worked for 3-4 days a week on Mr D's matters and this work was billed on a fixed fee basis.

60.17 In his witness statement the Respondent said that the costs relating to the property purchase for Mrs W had been agreed on a commercial basis at an agreed percentage rate on the value of the transaction plus disbursements. He could not remember the exact rate agreed but thought it would have been about 3.5% of the purchase price. The Respondent stated that he had conducted searches on 27 November 2008 which revealed that Mr D was not a director of AC and further searches on 1 December 2008 and 21 January 2009 showed an 'Eric [F D]' had been a disqualified director since 12 June 2007. The passport provided by Mr D showed his name was the same name, Eric [F] D. The Respondent then made a SOCA report on 23 January 2009. However, he was contacted by the police and told to continue.

60.18 In his second witness statement the Respondent stated the transfer of £2,059 from client account to office account on 21 January 2009 was for conveyancing work for which a bill was issued. He said that the transfer of £3,200 from client to office account on 30 January 2009 was described as "B" and was for other work done on D matters, for which a bill was also issued. He stated the bill for the conveyancing was £1,950 plus VAT of £292.50 and this was issued to Mr D, not Mrs W, on Mr D's instructions.

60.19 The Respondent stated that he had agreed a smaller deposit of £74,000 with the seller's solicitors and this amount was paid to them on exchange of contracts on 29 January 2009. However, after making a second SOCA report on 19 February 2009, the Respondent was informed that he should not proceed with the transaction.

60.20. The Tribunal noted that, having received £80,000 from M Ltd on 21 and 22 January 2009, and then a further sum of £1,584,985 from B on 17 February 2009, the Respondent was in receipt of a total of £1,664,985. A deposit of £74,000 was paid to the seller's solicitors on 29 January 2009 leaving a sum of £1,590,985 in client account. The Respondent transferred the sum of £1.5m to deposit account on 2 April

2009. Having deducted the transfers from client to office account of £2,059 and £3,200, the Tribunal noted this left a balance on client account of £85,726. This amount was accepted by the Respondent.

60.21 The Respondent in his second witness statement said that he did not transfer the £85,726 to the deposit account as he had been told by the police that he could collect his fees. He said he knew the fees came to at least £85,726 split between the conveyancing fees and the fees for other work he had done for Mr D. He could not, however, say how those monies were disbursed. In his second witness statement he said:

> "I cannot explain what happened to the balance of the [W] monies that was in the client account in April 2009. I can only say that it must have been mixed with other client monies standing in credit in the client account at the time and disbursed through the course of the firm's practice."

60.22 The Tribunal also heard oral evidence from the Respondent. On cross-examination, the Respondent stated that he could not find entries in his office account statement which equated to £85,726 in tranches or otherwise. However, he said that he did recall drawing bills, printing them and sending them to the company, AC, over a period of 3-4 months. Ms. Whatmore, in her evidence, stated that following the closure of the firm there was a credit balance, as at 7th August 2009, in the Respondent's private bank account in the sum of £81,000. In his oral evidence the Respondent stated that this was money from a close friend ready for a business opportunity, should he find one.

60.23 The Respondent stated that Mr D had told him not to contact AC or any employees in relation to the purchase of the property for Mrs W as Mr D did not want anyone to know about it. The Respondent stated that he had checked whether Mr D was a director of A Ltd. He had found there were a number of A companies but he could not check them all. The Respondent stated that Mr D had given him a business card which indicated the business, AC, also traded as another company, but the name of the other company was obscured on the card. Mr D had provided identification documents to the Respondent on 18 December 2009. The Respondent described Mr D as "a compelling gentleman" and "very charming, always had a reason". He said that he knew Mr D as 'Patrick D' and that when he had done searches, he had found an "Eric D" to be a disqualified director. He said he had not been sure if they were both the same person and that he did not think it impossible that a disqualified director could be in charge of a multi-million pound organisation. The Respondent said that he had asked Mr D for further information about the business, AC, and that although Mr D said he would provide it, he did not, and always had a reason for this.

60.24 Later, on questioning from the Tribunal, the Respondent said that he had sent invoices to AC in Canary Wharf which was a different company, of which Mr D was a director. The Respondent had not known if this was a branch office or an overseas base so he could not be sure if it was the same business. When he had called the telephone number given, people answered who knew Mr D.

60.25 In relation to the retainer of £150,000 per annum agreed with Mr D, the Respondent stated this had been in writing and was with the papers in storage. The agreement was that Mr D would provide work to a minimum value of £150,000 per year.

60.26 The Respondent said that M Ltd was a company that Mr D said he was associated with. He said the two payments of £40,000 each from M Ltd, which came in one day after the other, were not for the deposit on the property purchase and they "came in out of the blue". The Respondent had thought "they were catching up and paying fees on account". However he had then used much of that money to fund the deposit paid, of £74,000.

60.27 The Respondent confirmed that the transfer from client account to office account in the sum of £2,059 on 21 January 2009 was partly for conveyancing costs even though they did not equate to the completion statement. He accepted conveyancing fees were usually taken on completion and said this bill was for "work done to date" which included all the searches, transfers and contract. The Respondent said he had done everything except register the title. He said the transfer from client account to office account of £3,500 on 30 January 2009 was for costs generally on account of work done for B and these were all the funds that had been available at that time to transfer against outstanding costs of £85,000.

60.28 The Respondent accepted that, in his second witness statement dated 7 October 2013, an amount of 3.5% of the purchase price had been agreed as the fee for the property purchase which amounted to £56,000. He said on cross examination that the transaction was dealt with on a commercial basis and including creating a business for a retreat, setting up a trust as well as a loan agreement and a mortgage with B. He said that the number of hours and days he had worked for Mr D on other matters were in addition to the 3.5% fee for the property purchase. He said that at the time he had spoken to the police his total outstanding bills were about £85,000 which covered the period November 2008 to January 2009. Some of these bills had been delivered to Mr D at his home address and some to the business, AC. The Respondent stated that he was sure he would have told the police of the amount outstanding. He had also spoken to the Ethics Department of the Law Society about it and they had informed him that as long as he could provide bills it was fine to collect the fees. The Respondent did not make a note of any of these conversations or have any documents regarding his SOCA reports.

60.29 The Respondent stated that the Statement of Account included in the Applicant's papers, which showed a substantial "broker fee" that had not in fact been incurred, was a "working draft" and that when Mr D could not "get his money out" the Respondent had negotiated a reduction in the deposit to £74,000. He said they had agreed to use the monies paid for SDLT and Land Registry fees to pay the deposit of £74,000 and these would be shown on the correct completion statement. He said the sum of £80,000 should not have been showing on the completion statement and had been included in error after those funds arrived. The Respondent had thought the £80,000 was for fees but Mr D had wanted to use them for the deposit on the property purchase. The Respondent could not explain why he did not take the sum of £80,000 at the end of February 2009 even though he believed it was due in fees at that time and he had agreed with Mr D that he could take these towards costs. He said he was waiting for instructions from the police.

60.30 At the time of this transaction, the Respondent stated he had about a dozen or so other clients. He could not be specific about the total bills he had done. The Respondent said he had started doing some templates and precedents for Mr D. A set of employment contracts had incurred fees of £10,000 and he had issued invoices “bit by bit” for these. He said the bills were on his computer system and had all been outstanding.

60.31 The Tribunal, having considered all the documents provided, and the evidence it had heard, concluded the Respondent’s evidence and his demeanour on this matter were not credible. His evidence had been inconsistent and contradictory in parts. In relation to the source of the deposit he gave varying evidence. On the one hand his evidence was that he had agreed a reduced deposit of £74,000 and this was to come from monies paid to him on account of SDLT and Land Registry fees. On the other hand he agreed the deposit was paid from the two sums of £40,000 each received from M Ltd, which he described as payments “out of the blue” and which he said he had thought were payments on account of his fees. He could not account for why he had not transferred the money from M Ltd to office account given that he had given evidence that he had bills to this amount outstanding. His evidence in connection with the conveyancing charges for the transaction was also inconsistent. On the one hand he said that he had been asked by Mr. D to keep the conveyancing charges to a minimum and he stated the bill for the conveyancing was for a sum of £1,950 plus VAT. However he also said that he would have charged on a commercial basis and that a fee of around 3.5% had been agreed, which would have amounted to £56,000. The Respondent also said that the transfer from client account to office account, in the sum of £2,059, on 21 January 2009 was partly in respect of the conveyancing costs, although the Tribunal noted that this figure did not tie in with the completion statement found by Ms. Whatmore in the file or the rest of his evidence on the question of the conveyancing costs. The Tribunal found his explanations implausible. The Respondent’s evidence in connection with the retainer fee which he had agreed with Mr. D was also contradictory. On the one hand the Respondent claimed in his witness statement that he had agreed a fixed fee retainer with Mr D of £150,000 per annum and any work which took the firm’s costs over this would be invoiced separately. However, in oral evidence, the Respondent said he had carried out commercial work for Mr. D from early November 2008 to late February 2009 and this work was billed on a fixed fee basis. The Tribunal was not given any clear picture as to how the retainer arrangement was intended to have operated. The evidence given varied with the question asked.

60.32 The Respondent’s evidence on the director disqualification issue was also inconsistent. In his witness statement dated 7 October 2013, the Respondent stated the passport provided by Mr D to his firm confirmed Mr D’s name as “Eric [F D]” which was exactly the same name which showed as a disqualified director in the searches conducted by the Respondent on 27 November 2008 and 1 December 2008. The passport had been provided on 18 December 2008 so the Respondent should have known by this date that there was a possibility the disqualified director searches related to the same person. Yet, in his oral evidence the Respondent claimed he knew Mr D only as “Patrick D”.

60.33 The Tribunal found it surprising that over £85,000 of fees could be incurred in a few weeks for a property purchase which it was intended would be operated in the future

as a business of "a retreat". This was against a background of the Respondent conducting searches and finding out that Mr D was or could have been a disqualified director. The Tribunal also could not understand on what basis the Respondent had decided to transfer the sum of £1.5million to a deposit account when he claimed that his outstanding fees from all matters he was dealing with for Mr D were in excess of £85,726. The Tribunal would have expected the Respondent to bill all his outstanding costs before transferring the remaining balance to a deposit account. The Respondent, when asked by the Tribunal, could give no explanation why he might bill less than his entitlement, when the money was available in his client account to meet all his outstanding costs, and where he knew he would have no other opportunity to collect any balance. He had the approval of the police to deposit the balance of the monies, having deducted his costs. No other party had objected to this course either so he could have taken all his fees due. The actual amount that the Respondent deducted appeared to the Tribunal to have no connection with the amount the Respondent claimed was owed by Mr D to him, but was simply to leave a round sum of £1.5m to put on deposit.

60.34 The client on this property transaction was Mrs W. The funds received from M Ltd and B were paid into her client account. The Respondent claimed to have sent invoices to Mr D and AC but there was no evidence to support this. The Respondent's explanations for the alleged billing of £85,726 were not clear and were contradictory. Even if a fee of 3.5% of the purchase price had been agreed for the property transaction, this still only amounted to £56,000.

60.35 There was confusion about the source of the funds used to pay the deposit on exchange. The Respondent claimed in oral evidence that the monies provided for SDLT and Land Registration fees were used to pay the deposit of £74,000. Yet in his witness statement of 7 October 2013, the Respondent made reference to payments of £80,000 from M Ltd on 21 and 22 January 2009, and then a deposit of £74,000 being paid to the seller's solicitors on 29 January 2009. Furthermore in his oral evidence, the Respondent claimed the payments of £80,000 were on account of costs for the work he had been doing for Mr D. These were contradictory explanations.

60.36 The Statement of Account in the Applicant's bundle was not dated. However, in his witness statement the Respondent stated at paragraph 13.9(d) that the balance of completion monies was received on 17 February 2009. As the deposit had already been paid on 29 January 2009 and the sums for SDLT and Land Registration fees were not received until 17 February 2009, the Tribunal found it difficult to reconcile how the funds for SDLT and Land Registration Fees could have been used to pay the deposit. The only funds available at the date of exchange were the payments of £80,000 from M Ltd, so these must have been used to pay the deposit.

60.37 Furthermore, the Respondent's explanations for the "corporate work" he had carried out for Mr D were vague with no evidence in support. The Respondent stated the police had taken his conveyancing file. If the bills had been prepared as alleged, the Tribunal found it surprising that those bills were not on the file. It was further surprising that the Respondent had not kept any record of his discussions with the police, SOCA or the Law Society's Ethics Department.

60.38 It was not clear on exactly what date(s) the total sum of £85,726 had been transferred from the Respondent's client account to his office account. The Tribunal was not satisfied that the Respondent had sent bills for £85,726 to Mrs W before transferring his costs from client to office account, indeed the Tribunal was not satisfied that such bills had even been prepared at all, or that the Respondent had carried out the work he claimed to have done. There was no evidence of bills for the two transfers from client to office account of £2,059 on 21 January 2009 or £3,200 on 30 January 2009.

60.39 Accordingly, the Tribunal was satisfied that the Respondent had not held Mrs W's client money in his client account as required under Rule 15(1) SAR. The Tribunal considered Rule 22 and specifically Rules 22(1)(a) and (e) as indicated in its earlier decision on a preliminary application. The Tribunal was satisfied the Respondent had withdrawn money from client account in breach of Rule 22(1)(a) in the absence of having provided any bills to Mrs W. This was a breach of Rule 22(1)(e) as he did not have Mrs W's instructions to withdraw those funds. The Tribunal then considered Rule 19(2). The Tribunal was satisfied that the Respondent had failed to send any bill of costs to Mrs W prior to transferring the funds and he had breached Rule 19(2). The Tribunal found Allegations 1.1(a), 1.1(b), and 1.1(c) all proved in relation to the property purchase for Mrs W.

<u>Mr and Mrs Carter</u>

60.40 This allegation concerned a litigation matter conducted on behalf of Mr and Mrs Carter who instructed the Respondent in 2008. The clients became involved in a neighbour dispute in around 2001. They initially instructed a firm called F & Co to deal with the matter. Subsequently, in 2005 their case was transferred and had been dealt with by Mr P, whose practice later merged with the Respondent's firm. The clients were involved in two disputes – "the Sightlines Dispute" and the "Roadways Dispute". The litigation was in the advanced stages by the time the Respondent came to have conduct of the case.

60.41 A number of transfers were made from the client account to the office account during the period 2 July 2008 to 5 June 2009. These included the following:

- £500 on 13 August 2008
- £500 and another £6,000 both on 19 December 2008
- £1,000 and another £2,140 both on 23 December 2008
- £800 on 20 March 2009
- £150 on 23 March 2009
- £300 on 24 March 2009
- £2,010 on 27 March 2009
- £50 and another £100 both on 30 March 2009
- £2,000.70 on 31 March 2009
- £700 on 3 April 2009
- £509 on 6 Aril 2009
- £50 and another £1,568.47 both on 8 April 2009
- £17,250 on 28 April 2009
- £1,000 on 4 June 2009
- £550 and another £1,000 both on 5 June 2009

- £1,234.95 on 8 June 2009
- £4,012 on 9 June 2009
- £208.61 on 24 June 2009

60.42 A number of payments had been made into the account as follows:

- £1,500 on 2 July 2008
- £10,000 on 23 March 2009
- £10,000 on 24 March 2009

In addition on 3 June 2009 the sum of £35,794.92 was received from The B Partnership and credited to the Respondent's client account. On 24 June 2009, a further sum of £121.23 was received from The B Partnership and also credited to the Respondent's client account.

60.43 Ms Wingfield submitted the Respondent had breached Rule 15(1) of the SAR by not retaining the sum of £35,794.92 from The B Partnerhsip in his firm's client account, and that he had also breached Rule 22 and Rule 19(2) by withdrawing those funds from client account without providing the client with a bill or written notification of costs, save for one invoice in the sum of £5,875 dated 31 December 2007.

60.44 Mr Carter provided a witness statement dated 9 August 2012. In that statement he said that the "Roadways Dispute" had started first and successfully concluded in the Southend County Court. The judgment was upheld on appeal in April 2006 by the Court of Appeal. Mr and Mrs Carter had been awarded costs which had led to separate costs proceedings and an interim payment of costs had been made to Mr P by the neighbours' solicitors of £15,000 in late 2007.

60.45 Mr Carter stated that a second case was started against the same neighbours in 2005, the "Sightlines Dispute". Mr Carter had funded the case up to 2007, and in late 2007, when the sum of £15,000 was received in relation to the "Roadways Dispute", Mr Carter had told Mr P to keep that money on account of costs for the "Sightlines Dispute". He stated he had no idea how that money was applied and it seemed to him that it was used up as he paid more and more for costs on the "Sightlines Dispute". Mr Carter said he had no idea who the Respondent was until he received an invoice in the sum of £5,875 dated 31 December 2009 from the Respondent's firm. He then rang Mr P to ask who the Respondent was. He was told that Mr P had asked the Respondent to do some work on the case as Mr P had been busy. Some time later Mr Carter was told by Mr P that the case was being transferred to the Respondent as Mr P was in trouble with the Law Society. However, Mr P said he would retain control and Mr Carter continued to deal mostly with Mr P.

60.46 Mr Carter further stated that on 18 June 2008 an order was made in the "Sightlines Dispute" in their favour and they were awarded damages of £35,831.05 plus costs. Mr Carter's neighbour was ordered to pay this amount into an account opened in the joint names of their respective solicitors with enforcement to be stayed, pending appeal. The decision was upheld on appeal save that the damages were reduced to £20,000. Mr and Mrs Carter were also awarded costs of £36,000.

60.47 At the time of the appeal, Mr and Mrs Carter understood their account with the Respondent's firm was completely up to date and they expected to receive the full £35,831.05 from the solicitors' joint account. They were not aware that £35,794 had been paid to the Respondent's firm on 3 June 2009. Mrs Carter had written to the Respondent on two occasions on 3 and 21 July 2009 to ask if the funds had been received and the Respondent had informed them that he was chasing the matter up.

60.48 Mr Carter also gave oral evidence to the Tribunal. He stated he had not received any client care information from the Respondent and that when he was asked for fees, he paid them by either cheque or bank transfer. He said fees were requested by email, or text or a telephone call. Mr Carter said he had only received one invoice from the Respondent dated 31 December 2007 in the sum of £5,875. He said that he had paid at least £56,000 in costs for the "Sightlines Dispute" which included the sum of £15,000 that had been paid for the "Roadways Dispute" but which Mr P had been instructed to use for the "Sightlines Dispute". Mr Carter thought that they may have paid more.

60.49 On cross-examination, Mr Carter stated that by the end of the Court of Appeal case, he and his wife had understood they were in credit with the Respondent and they had expected to receive the whole of the £36,000 and also damages of £20,000. Mr Carter denied having seen the letter dated 25 September 2009 from A Legal Costs which set out the total costs of both litigation cases at £146,289.71. He said that if total costs had been incurred in that amount, he should have been told as he would have stopped the proceedings in view of the costs being wholly disproportionate to what he was seeking to achieve. He denied that letter had been attached to the Respondent's email to Mrs Carter dated 27 September 2009 and said that had he been aware of it, he would have contacted the Respondent.

60.50 Mr Carter denied having received an invoice dated 6 March 2006 in the sum of £8,695 from the Respondent or any other invoices save for the invoice dated 31 December 2007 in the sum of £5,875. Mr Carter denied the Respondent had given his wife a breakdown of fees and bills of account at the Court of Appeal hearing. He accepted he had not attended that hearing but said she would have given any such documents to him. Mr Carter denied he and his wife were impecunious or that the Respondent had funded their litigation. He said they had paid all monies due and that there had only been one occasion when a cheque to Mr P was returned as the money he had transferred to meet the payment had not yet cleared through the account.

60.51 The Tribunal also heard evidence from Ms Whatmore on this matter. She had only examined the client and office bank statements and confirmed all the debits set out above were paid into the firm's office account. She stated a significant number of payments were round sum transfers and described as "fees".

60.52 In the Respondent's witness statement dated 7 October 2013, he stated that while he had had conduct of the case the clients had made payments of £21,500 to the firm for the "Sightlines Dispute". He said the receipt of £35,916.15 to the client account from The B Partnership was towards the costs of the "Sightlines Dispute". The Respondent stated the work carried out by Mr P in relation to this case amounted to £19,844 plus VAT.

60.53 The Respondent stated that two barristers had been instructed to act on the clients' behalf on both the "Sightlines Dispute" and the "Roadways Dispute". The total fees for the barristers were £36,275 plus VAT. The clients had paid one of the barristers the sum of £11,750 direct towards his fees.

60.54 The Respondent attached to his witness statement a bill of costs prepared by A Legal Costs which indicated the total costs for appeal proceedings came to £41,737.50. That bill had been prepared after all the files on the case, including those of previous solicitors, had been sent to A Legal Costs. The Respondent could not provide a Schedule of Costs for the "Sightlines Dispute" but said they were unpaid. He referred to an email from him to Mrs Carter dated 27 September 2009 which attached a letter from A Legal Costs setting out a summary of all the costs incurred by the various firms on the two disputes. The costs of the first firm of solicitors were £30,047.05, the costs for Mr P and the Respondent's firm were £116,242.56. The total costs were £146,289.71 plus interest and there were costs draftsman fees of £6,956.53 plus VAT. The Respondent stated there were also additional costs of £3,000 plus VAT for enforcement proceedings that he had dealt with.

60.55 The Respondent's position in his witness statement was that the total costs incurred exceeded the amounts paid by the clients (£21,500) and the amounts received from The B Partnership (£35,916.15). The Respondent stated there was no retainer letter between any of the solicitors and the clients, and that the clients understood they would be charged on an hourly rate from the outset. They expected to pay money on account of costs and when those funds ran out, they provided more money without questioning the arrangement.

60.56 In his witness statement, the Respondent stated the clients were impecunious and they were aware they owed the firm a great deal of money. The Respondent was prepared to wait and ensure they "had their day in Court". The Respondent stated that he and Mr P had been funding the clients' litigation and they had not taken all the money on account to pay for their fees, so as to ensure there was a certain amount in the account in case of future disbursements which needed immediate payment. These included third party fees which he stated the clients were invariably not in a position to pay upon demand. He stated any transfers from client account to office account were against work that had been undertaken and invoiced.

60.57 The Respondent stated he could not produce any copy bills or invoices as the clients' files were no longer available. He accepted round sum transfers had been made from client account. The Tribunal noted that this seemed inconsistent with the Respondent's evidence that his firm's accounts system would not allow him to transfer costs from client account to office account unless an invoice had been issued.

60.58 The Tribunal heard oral evidence from the Respondent. He said that he had attended the Court of Appeal hearing in relation to the "Sightlines Dispute" and that he had already prepared a bill of costs for that hearing. He said that Mr Carter had not attended and he gave that bill to Mrs Carter at the beginning of the hearing. That bill had been for £41,000.

60.59 The Respondent produced a number of documents before the Tribunal at the hearing on 29 October 2013 which were various invoices from the three firms who had dealt

with the Carters' litigation. He explained what all these invoices related to and said these were costs they were seeking to recover. He said they were over £50,000. He said that he had asked the costs draftsman to rework the bills as he thought it would be better to redraft from scratch so all the files were sent to A Legal Costs. The total figure calculated by A Legal Costs had been £146,289.71. He had discussed the costs in an email to the clients dated 27 September 2009 and they were aware of the figures. Emails were sent to Mrs Carter as Mr Carter lived in Spain for most of the year. The Respondent stated that Mrs Carter, having attended the Court of Appeal hearing, had heard the summary assessment herself.

60.60 On cross-examination, the Respondent stated that from the sum of £15,000 paid by Mr Carter, £10,000 had been paid to the first firm of solicitors, F and Co, and £5,000 had been paid to Mr P. The Respondent denied the Carters had paid £56,000 to his firm. He said that from 8 March 2006, his firm had issued the bills and that Mr P had sent letters to the clients on the Respondent's firm's letterhead so they knew who the Respondent was. The Respondent had also attended conferences with Counsel when Mr P had been unavailable. The Respondent confirmed he had not seen any client care information on the files but these had gone to the costs draftsman. He thought at least one client care letter would have been written possibly by the first firm to deal with the file.

60.61 The Respondent said that both he and Mr P knew money was limited and that not a great deal had been paid. He said that he did inform the clients that money had been received from The B Partnership and that they knew this was for costs due to the firm, and the damages had not been paid. The Respondent said that the court had ordered two payments, one for damages of £20,000 and one for costs of about £35,000.

60.62 The Respondent could not produce copies of any other bills save those provided and said the total costs due on all the documents were about £155,000 plus the costs draftsman fees. They had intended to enforce the costs by selling assets owned by the neighbours.

60.63 In relation to the transfers made from client to office account, the Respondent explained that where two transfers had been made on 19 December 2008, this was because he had initially thought only the first amount of £6,000 would be required to meet costs, but then a further amount of £500 was needed. The same had happened on 24 March 2009. He said that the sum of £35,794.92 paid by The B Partnership on 3 June 2009 was not transferred all at once as enforcement proceedings were still ongoing and costs were needed to deal with matters such as disbursements. He said he was trying to provide a good service and get the clients a result.

60.64 The Tribunal considered all the documents and the evidence on this matter carefully. The Tribunal found Mr Carter to be a credible witness who gave his evidence in a clear and candid manner. He was an inexperienced litigator. He genuinely believed he was up to date with all payments and indeed stated that had he known the total costs were around £146,000, he would never have continued with the case. He had paid costs when asked and was not aware he should have received bills. Mr Carter thought he was paying the costs as he went along so when the sum of £35,794.92 came in from the opposing party, he expected it to be paid to him so he would recover some of the costs he had already paid, which were in excess of this amount.

60.65 The Tribunal particularly took account of the two emails sent by Mrs Carter to the Respondent on 3 and 21 July 2009, both of which were after the Respondent had received the sum of £35,794.92 from The B Partnership on 3 June 2009. On 3 July 2009 Mrs Carter requested a bill of costs against the "site lines from start to finish" and the "costings" from the first case. Then Mrs Carter emailed the Respondent again on 21 July 2009 stating:

> "1. Can you please confirm that the law lord costs have been paid, thats [sic] the £36,000.
>
> 2. How are we getting on with the damages and interest.
>
> 3. ….
>
> 4. How are we getting on with the first case of costings.
> as this is a lot of money due to us……"

60.66 The Respondent sent Mrs Carter a copy of an email he had sent to The B Partnership on 9 July 2009 which stated:

> "The award of damages recently ordered by the Court of Appeal has not been paid by your clients…….."

The Respondent did not write to his clients to advise them that he had received the sum of £35,794.92 on 3 June 2009 and it was quite clear from Mrs Carter's email dated 21 July 2009 that she was not aware that amount had been received as at that date.

60.67 The sum of £35,794.92 was received from The B Partnership on 3 June 2009. This was in addition to any amounts paid by Mr and Mrs Carter. By this date, Mr and Mrs Carter must already have paid the sum of at least £20,646.17 on account of costs as, by 28 April 2009, this total amount had been transferred to office account for costs. The Tribunal took the view that frequent payments from client account to office account were unlikely to be commensurate with costs required to progress the litigation.

60.68 The transfers of funds from client account to office account after 3 June 2009 were made without the clients' knowledge as they were not even aware the funds had arrived. These transfers, all described as "Carter fees" consisted of £1,000 on 4 June 2009, £1,550 on 5 June 2009, £1,234.95 on 8 June 2009, £4,012 on 9 June 2009 and £208.61 on 11 June 2009. The Tribunal had seen no evidence that bills had been rendered for those amounts. Furthermore, the sums transferred did not amount to £41,000 which the Respondent claimed was the amount of the bill he gave to Mrs Carter at the Court of Appeal hearing.

60.69 The Tribunal found it implausible that, if at the Court of Appeal hearing the Respondent had given Mrs Carter a bill of costs amounting to £41,000, then, having received £35,794.92 on 3 June 2009, he did not transfer that full amount towards settlement of his bill of £41,000. This was even more surprising if, as claimed by the Respondent, the clients had been aware that the monies had been received.

60.70 The Tribunal was not satisfied that the Respondent had provided the clients with written notification of costs for £35,794.92. Mr Carter's evidence that he had not seen any bill for £41,000 which had allegedly been given to Mrs Carter at the Court of Appeal hearing was consistent with Mrs Carter's emails to the Respondent, sent after the funds had been received, asking for further information.

60.71 The Tribunal was satisfied that the transfers made from client to office account after 3 June 2009 had been made in breach of Rule 15(1) in that the Respondent had failed to hold Mr and Mrs Carter's client money in his client account as required. The Tribunal considered Rule 22 and specifically Rules 22(1)(a) and (e). The Tribunal was satisfied the Respondent had improperly withdrawn money from client account in breach of Rule 22(1)(a) in the absence of having provided any written notification of costs to Mr and Mrs Carter. This was also a breach of Rule 22(1)(e) as he did not have their instructions to withdraw those funds.

60.72 The Tribunal then considered Rule 19(2) and note (x). The Tribunal was satisfied that the Respondent had failed to send any bill of costs to Mr and Mrs Carter prior to transferring the funds after 3 June 2009 and he had breached Rule 19(2). The Respondent himself had accepted he had made round sum transfers and in any event, in the absence of any bills sent to the clients for those amounts, this had also been a breach of note (x). The Tribunal found Allegations 1.1(a), 1.1(b), and 1.1(c) all proved in relation to Mr and Mrs Carter's case.

60.73 The Tribunal was satisfied Allegation 1.1 was proved.

61. Allegation 1.2: The Respondent acted in breach of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct ("SCC").

61.1 The relevant Rules of the SCC were as follows:

> "1.02 You must act with integrity.
>
> 1.04 You must act in the best interests of each client.
>
> 1.05 You must provide a good standard of service to your clients.
>
> 1.06 You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession."

61.2 The Respondent had accepted he had breached Rule 1.05 in relation to Mrs E in that he had not provided her with a good standard of service.

61.3 In closing submissions, Ms Wingfield's case was that the Respondent had breached Rules 1.02 and 1.06 of the SCC in relation to Mrs W. Ms Wingfield submitted the transactions had clearly been fraudulent and were therefore a breach of these Rules.

61.4 Further, Ms Wingfield's case, in her closing submissions, was that the Respondent had breached Rules 1.02, 1.04, 1.05 and 1.06 in relation to both Mr and Mrs Carter and Mrs E. Ms Wingfield submitted that in the case of Mr and Mrs Carter, the

Respondent had breached these rules in transferring funds from his client account without the clients' authority.

61.5 In the case of Mrs E, Ms Wingfield submitted the Respondent had breached these rules as, having received funds from the lender on 12 November 2009 to complete the purchase, he had failed to obtain funds from the client for the payment of SDLT, he had failed to obtain a signed SDLT Form and he had failed to register both the client and the lender's interests in the property. Registration was eventually completed on 21 March 2011 when the lender instructed its own solicitors to deal with matters.

Rule 1.02 – Acting with integrity

61.6 As indicated, Ms Wingfield for the Applicant alleged the Respondent had breached Rule 1.02 on all three client matters, Mrs W, Mr and Mrs Carter and Mrs E. Mr Parker, on the Respondent's behalf, submitted the Respondent had not breached Rule 1.02 and not acted with a lack of integrity on any of these matters. Mr Parker referred the Tribunal to the case of The Law Society (SRA) v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin) in which LJ Moses found it difficult to distinguish between a lack of integrity and dishonesty. Mr Parker submitted integrity was defined in The Oxford English Dictionary as:

> "soundness of moral principle; the character of uncorrupted virtue; uprightness, honesty, sincerity".

In Dictionary.com it was defined as:

> "adherence to moral and ethical principles; soundness of moral character; honesty".

61.7 Mr Parker also referred the Tribunal to the case of R (on the application of May) v The Chartered Institute of Management Accountants [2012] EWHC 1574 (Admin) in which Stadlen J stated:

> "154. I have great difficulty in understanding the distinction apparently drawn by the Appeal Committee between acting dishonestly on the one hand and acting not in a straightforward way on the other. …… Section 110.1, also headed 'Integrity', provided that the principle of integrity imposed an obligation on all professional accountants to be 'straightforward and honest in professional and business relationships'. It added 'integrity' also implies fair dealing and truthfulness.
>
> 155. When applied to human conduct or behaviour, the word straightforward is commonly used in the sense of honest and frank, not circuitous or evasive, honest and open, not trying to trick somebody or to hide something. In other words it is broadly synonymous with honest."

61.8 Mr Parker submitted that, as the Respondent had not been challenged, while giving his evidence, on what he had done and his understanding of the standards of others, and nor had it been put to him that he had acted dishonestly, an allegation of dishonesty failed.

61.9 In relation to the case involving Mrs W, Mr Parker submitted the Respondent had made two SOCA reports about Mr D. In addition he had sought advice and guidance from the police and the Law Society. He had been trying to do the right thing and he had not completed the transaction when instructed not to do so. He followed all the advice from the police on the words to be used with Mr D to explain why the transaction could not proceed. It had not been put to the Respondent that he had not made the reports, or that he had not spoken to the police/Law Society, and Mr Parker submitted his evidence was therefore unchallenged. In light of these facts, he submitted the Respondent had not acted with a lack of integrity.

61.10 In relation to Mr and Mrs Carter's matter, Mr Parker submitted the Respondent had accepted he had made round sum transfers but this did not amount to a lack of integrity. It was simply a breach of the rules and nothing more sinister.

61.11 In relation to Mrs E, Mr Parker submitted that although the Respondent had accepted he used his own personal bank account for a fraction of time to receive lender's funds this was not acting with a lack of integrity. At the time his practice client account was unavailable to him and he had used his own personal account to receive and then immediately to disburse the mortgage moneys, which had gone to the correct destination. He had simply been trying to be helpful. His failure to register the clients' title and to obtain payment of SDLT was an error but did not amount to a lack of integrity. He had not gained any benefit and there had been no loss to clients as their titles were eventually registered.

61.12 Dealing firstly with Mrs W's case, the Tribunal accepted the Respondent had been duped by a highly skilled fraudster over a relatively brief period of time of only a few months. The introduction had been made by a colleague of the Respondent and whilst there were issues with Mr D, the Tribunal did not criticise the Respondent for dealing with him initially.

61.13 However, the Tribunal was of the view that the Respondent should have acted differently once he realised, in or about 18 December 2008, when Mr D provided his passport to the firm, that there was an entry for a disqualification of a director whose name was identical to the one given in the passport from Mr D. The Tribunal was of the view that from 18 December 2008, the Respondent should have acted differently. Notwithstanding this, the Tribunal was mindful that the Respondent had been acting for Mrs W, who was his client in this transaction, not Mr D. Also, the Respondent had made SOCA reports and spoken to the police, indeed it appeared that the Respondent's actions had led to Mr D's arrest and subsequent conviction. The Tribunal concluded it could not be satisfied to the requisite standard that the Respondent had acted with a lack of integrity on this matter. The Tribunal did have concerns about the transfer of funds from the client account to the office account in the absence of written notification of costs having been provided to Mrs W, however, this was not the basis upon which the Applicant had alleged the Respondent had acted with a lack of integrity and therefore the Tribunal made no finding in this regard.

61.14 Turning to Mr and Mrs Carter, the Tribunal had found the Respondent had failed to inform his clients of the receipt of funds from The B Partnership, and then had transferred those monies to his office account without notifying the clients first. Furthermore the Tribunal had found that the Respondent had failed to answer

Mrs Carter's emails and had not, by 21 July 2009, told his clients that he had received the funds from The B Partnership whilst at the same time having transferred some of the monies into his office account. In the Tribunal's view this was certainly not straightforward dealing. The Respondent had put his own interests before those of his clients, for his own benefit, and this showed he had acted with a lack of integrity.

61.15 Finally in relation to Mrs E, the Respondent had been instructed to act on the purchase of a property on behalf of both the client and the lender. During the course of that transaction the lender had paid the mortgage advance into the Respondent's personal bank account pursuant to receiving a Certificate of Title from the Respondent. Having completed the transaction, the Respondent had not submitted an SDLT Form to the Inland Revenue and nor had he completed registration of the title.

61.16 In his witness statement dated 7 October 2013, the Respondent admitted the mortgage advance had been paid into his personal bank account and accepted that he did not receive any monies on account for SDLT from the client and nor had he paid stamp duty. He accepted the property was acquired on 13 November 2009 and that Mrs E and the lender's titles were not registered until 21 March 2011 by another firm of solicitors, who had subsequently been instructed by the lender to take over the file.

61.17 In his witness statement the Respondent stated that he had received instructions on this matter from Mr C, a long standing client and personal friend in June 2009. This was when he was already in the process of closing the firm and was some two months after his bank account had been frozen. Mrs E was related to Mr C. The Respondent stated that the transaction was delayed for finance and planning reasons and that he had used his personal bank account to receive the completion monies because the firm's bankers had withdrawn banking facilities from the firm due to a freezing injunction. The Respondent stated that after completion he informed Mr C that he could not deal with the registration formalities, and that stamp duty had to be paid to the Inland Revenue but that the Respondent could not handle any client money because he had closed down his firm. He agreed with Mr C that Mr C would instruct other solicitors to complete the stamping and registration formalities. The Respondent stated he gave Mr C the file and all the relevant documents so that he could arrange to pass these to the new solicitors. The Respondent stated he also informed Mrs E of the position.

61.18 During cross-examination the Respondent stated that, even though he knew in June 2009 that he was closing his practice, he had accepted the instructions from Mr C because he had felt obliged to deal with this transaction due to his relationship with Mr C. He had thought he would have enough time to deal with everything but accepted now that this was ill judged.

61.19 The Respondent said that he had only used his personal bank account as he knew that the monies would come in from the lender and be paid straight out again. He had a bank account which was empty and had decided to use that in the interests of both parties. The Respondent stated he might not have had the "clearest thoughts" at the time as he had been unwell. He was concerned that the lender may not renew the mortgage offer to the client again if completion was delayed. He stated he made the decision at the time of completion. He had thought that particular personal bank account to be a "quasi client account" at the time.

61.20 The Respondent stated he had not obtained the money for stamp duty because he had thought it was not payable on this transaction. He later stated he became aware that stamp duty was payable when he had taken advice from his current solicitors, who had told him that he had read the information incorrectly. The Tribunal noted this was inconsistent with what he said in his witness statement. In his witness statement he stated he informed Mr C after completion that he could not deal with registration formalities, stamp duty had to be paid and that he could not handle client monies because he had closed his firm. When asked about this inconsistency, the Respondent said that he did not believe he actually said that to Mr C. He stated that his practising certificate was due to expire and that was the reason why he advised Mr C to instruct new solicitors. The Respondent stated he had not taken the money for stamp duty from Mrs E as he had mistakenly believed it was not payable on that transaction.

61.21 The Respondent stated during cross-examination that he realised he was running out of time to deal with registration. The Respondent also stated that he gave a complete set of papers to Mr C and that he did not notify the lender of this, despite the fact that he was acting for the lender, as he expected the new solicitors to notify the lender of the change when they dealt with registration. The Respondent confirmed that he had handed the file, which was the file for both the borrower (Mrs E) and the lender, to Mrs E's agent, and that file had included the lender's unregistered Charge.

61.22 The Tribunal was of the view that there had been a number of fundamental failures by the Respondent on this transaction. He had failed to obtain funds for the payment of SDLT from Mrs E, he had used his personal bank account for the transfer of lender's funds albeit briefly, and he had failed to register either clients' interest. The Tribunal found that the Respondent had shown a cavalier disregard of his obligations to his lender client. These were at the very heart of any lender/solicitor client relationship. The Respondent had handed over the original file, containing the lender's Charge, which had not been registered, to a third party agent without the lender's knowledge or consent thereby placing the lender's interests at risk. The Tribunal was satisfied that all these collective failures did amount to the Respondent acting with a lack of integrity.

61.23 Accordingly, the Tribunal found Allegation 1.2 proved in relation to Rule 1.02 in that the Respondent had acted with a lack of integrity on the matters concerning Mrs E and Mr and Mrs Carter.

Rule 1.04 – Acting in the client's best interests

61.24 Ms Wingfield alleged the Respondent had breached Rule 1.04 in relation to Mr and Mrs Carter, and Mrs E. Mr Parker, on behalf of the Respondent, submitted that the guidance to both Rules 1.04 and 1.05 were framed in terms of fiduciary duties. He referred the Tribunal to the case of Bristol & West BS v Mothew [1998] Ch1, 18A-C in which LJ Millet stated:

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good

faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal."

61.25 Mr Parker submitted that the Tribunal had to consider whether the Respondent had acted in such a way that there was a breach of a fiduciary duty. Mr Parker submitted the breach of Rule 1.04 had only been made in relation to Mr and Mrs Carter and Mrs E. He submitted it was impossible to see how the Respondent had breached his fiduciary duty in either of those two cases.

61.26 Mr Parker submitted that in the case of Mr and Mrs Carter, the Tribunal had the Respondent's unchallenged evidence in that his firm was substantially without funds and that he had been effectively self-funding the litigation on behalf of Mr and Mrs Carter. Mr Parker submitted these were not the actions of a person placing his own interests over his clients. Furthermore, Mr Parker submitted Mr and Mrs Carter were informed of the sums due to them, and that the monies received had been understood by the Respondent to be earmarked for costs.

61.27 In relation to Mrs E, Mr Parker submitted that the Respondent had simply done a bad piece of work. He had not preferred either Mrs E's interest over the lender's interest, or vice versa, as neither client's interest had been registered. He submitted this allegation was not proved.

61.28 On the matter of Mr and Mrs Carter, the Respondent had accepted, when giving his evidence, he had not acted in their best interests. The Tribunal was satisfied the Respondent had indeed failed to act in their best interests as he had not informed them that he had received the sum of £35,794.92 on 3 June 2009 from The B Partnership, even after enquiries had been made regarding its receipt from Mrs Carter. The Respondent had also proceeded to deduct costs from those funds without informing the clients.

61.29 Concerning Mrs E, the Respondent had accepted he failed to register her title to the property on completion and that this had been a failure to act in her best interests. The Tribunal took the view that, as he had also failed to register the lender's Charge and gave the file to a third party without notifying the lender, the Respondent had failed to act in the best interests of the lender client as well.

61.30 The Tribunal found Allegation 1.2 proved in relation to Rule 1.04 on both matters involving Mr and Mrs Carter, and Mrs E as well as the lender on her transaction.

Rule 1.05 – Providing a good standard of service

61.31 Ms Wingfield alleged the Respondent had breached Rule 1.05 in relation to Mr and Mrs Carter and Mrs E. Mr Parker also submitted the breach of Rule 1.05 was alleged only in relation to Mr and Mrs Carter and Mrs E. He confirmed the Respondent admitted he had breached Rule 1.05 in relation to Mrs E in that he had not provided her with a good standard of service.

61.32 Mr Parker submitted in relation to Mr and Mrs Carter that they had been given latitude in relation to the billing and the firm had in fact kept their litigation afloat for them. This was not a lack of providing a good standard of service indeed, there had been no complaint from Mr and Mrs Carter in relation to the quality of service given to them.

61.33 The Respondent had accepted he had breached Rule 1.05 in relation to Mrs E, and accordingly, the Tribunal found this proved. Concerning Mr and Mrs Carter, the Tribunal was satisfied that by failing to inform his clients of the receipt of the funds of £35,794.92 on 3 June 2009 from The B Partnership, the Respondent had failed to provide a good standard of service to Mr and Mrs Carter and had breached Rule 1.05. The Tribunal found Allegation 1.2 proved in relation to Rule 1.05 on the matters involving Mrs E and Mr and Mrs Carter.

<u>Rule 1.06 – Acting in a way likely to diminish the trust the public placed in the solicitor or in the legal profession</u>

61.34 The Applicant alleged the Respondent had breached Rule 1.06 on all three matters, Mrs W, Mr and Mrs Carter and Mrs E.

61.35 The Tribunal had already found that the Respondent had acted with a lack of integrity in relation to two clients, Mrs E and Mr and Mrs Carter. In addition to this, the Tribunal had found the Respondent had failed to act in the best interests of Mr and Mrs Carter, Mrs E and the lender on her transaction. The Tribunal had found the Respondent had failed to provide a good standard of service to Mrs E and to Mr and Mrs Carter. Having found breaches of Rule 1.02, 1.04 and 1.05, the Tribunal was satisfied that the Respondent had acted in a way that was likely to diminish the trust the public placed in him or in the legal profession.

61.36 In relation to Mrs W, the Tribunal had not found a breach of Rule 1.02 of the SCC and therefore could not be satisfied to the requisite standard, on the basis of the case put forward by the Applicant, that the Respondent had breached Rule 1.06 on her matter.

61.37 The Tribunal found Allegation 1.2 proved in relation to Rule 1.06 on the matters concerning Mrs E and Mr and Mrs Carter.

62. Allegation 1.3: The Respondent acted in breach of Rules 20.05 and 20.08 of the SCC.

62.1 Rule 20.05 of the SCC required solicitors to deal with the Solicitors Regulation Authority in an open, prompt and cooperative way and to notify the Authority of any changes to relevant information to the solicitor or his firm.

62.2 Rule 20.08 of the SCC required a solicitor to produce documents, information and explanations to the Authority. Specifically solicitors were required to promptly comply with a written notice from the Authority to produce for inspection documents held by them or under their control and all information and explanations requested in connection with their practice.

62.3 The Applicant's case was that the Respondent, having left his firm in June 2009, had failed to notify the Applicant of changes to information about his firm and had therefore breached Rule 20.05 of the SCC. Ms Wingfield submitted he had also breached Rule 20.08 of the SCC as he had failed to ensure the safekeeping of documents and assets entrusted to the firm and to keep the affairs of clients and former clients confidential. The Notice served on the Respondent pursuant to Rule 20.08 was deemed served seven days after being sent by post or DX to the Respondent's last practising address. Ms Wingfield reminded the Tribunal that the Intervention Agents had been unable to locate any records or monies and, although the client account balance was £0.09, without any accounting records, it was impossible to determine the total liabilities to clients.

62.4 The Tribunal heard evidence from Mr Beddoes on behalf of the Applicant concerning the attempts made to locate the Respondent and his files. Mr Beddoes stated that although the firm's premises in Northampton were believed to be empty, the landlord of those premises had been contacted to access the premises. Mr Beddoes stated that the property was empty and that post/telephones had been redirected so that anyone seeking to contact the Respondent/his firm would reach the Intervention Agents or the Applicant.

62.5 Mr Beddoes stated that after extensive unsuccessful enquiries to locate the Respondent, proceedings were commenced in the High Court in March 2010 to secure orders to search various premises and seize any relevant papers. Mr Beddoes did not know whether the Respondent had received any of the communications sent to him by Mr Beddoes as the Respondent had not replied to any letters, e-mails or telephone calls. The Respondent had eventually attended one of the High Court hearings at which he confirmed he had not received communications from Mr Beddoes.

62.6 On cross-examination Mr Beddoes confirmed he had no evidence of delivery of a letter to the Respondent dated 28 January 2010 (dated 2009 in error). He accepted that in his witness statement dated 23 August 2013, he had only exhibited one email to the Respondent dated 10 February 2010 and that by February 2010 the Respondent's practice had been abandoned. Mr Beddoes confirmed he had not requested a "read receipt" or a delivery notification for that email. Mr Beddoes also acknowledged that there was no evidence of file notes, or attendance notes of telephone calls he had attempted to make to the Respondent.

62.7 Mr Beddoes stated that the Respondent had left a property in B Road in 2008 and there was no evidence that he had returned to that property. Mr Beddoes stated that a trainee solicitor from his firm had attended another address at R Road, being an address provided by the SRA, on 28 January 2010. As the door was not answered at that address a letter was posted through the letter box. Mr Beddoes confirmed he had no evidence as to whether that letter ever came to the Respondent's attention.

62.8 On 4 February 2010 Mr Beddoes had attended an address at Waterside House given to him by a number of contacts as the address from which the Respondent had conducted business from time to time. Waterside House was a commercial property with a number of self storage units and serviced offices. However, Mr Beddoes stated that although the purpose of his visit had been to locate files, he had not been able to proceed beyond reception. He stated that a lady he had spoken to informed him she

"could" make contact with the Respondent and Mr Beddoes asked her to do so. Mr Beddoes was unable to say whether she had made contact with the Respondent or not. Mr Beddoes said that the demeanour of the woman he had spoken to appeared to be protective of the Respondent. She would not allow Mr Beddoes access to the premises. Mr Beddoes agreed that he required the proper authority of a court order to proceed further.

62.9 Mr Beddoes stated that the Respondent had sworn an affidavit dated 30 March 2010 in which he had stated his files/papers had been removed and/or stolen from Waterside House. Mr Beddoes stated that there was no evidence of this and no report had been filed with the police. Mr Beddoes said he did not believe the Respondent's position. Mr Beddoes claimed that the Respondent had not cooperated, and that he had made life very difficult putting Mr Beddoes and the Applicant to considerable time and expense. In response to a question from the Tribunal, Mr Beddoes said he was not aware of the address at which the Respondent had been traced after the High Court order had been made.

62.10 The Tribunal also heard evidence from Ms Whatmore on this allegation. She confirmed she had sent a letter to the Respondent dated 10 May 2011 giving the Respondent 14 days to arrange a meeting with her. She accepted that when he had not contacted her, she did not follow the matter up until 2 June 2011 when she sent him an email. She had not requested a "read receipt" or delivery notification of that email. Ms Whatmore stated that the email had not bounced back and indeed, was the same email address used in the High Court proceedings in 2010.

62.11 In his witness statement dated 7 October 2013, the Respondent stated he became aware of the intervention on 18 March 2010 but could not recall how this came to his knowledge. He stated his practice had closed down at the end of June 2009 following the withdrawal of the firm's bank facilities due to an injunction sought by the Crown Prosecution Service to freeze the firm's bank accounts. The Respondent stated that the lease at 5 Notre Dame Mews was imminently due to expire and he therefore moved the firm's files, records, furniture and office equipment to premises at Waterside House, Irthlingborough. The Respondent stated he made arrangements for the redirection of mail and telephones, and informed the firm's indemnity insurers.

62.12 The Respondent stated that he then "hot-desked" at Waterside House, which was primarily a storage facility for him, in order to deal with the remaining live matters he had conduct of. His recollection was that these matters were confined to Mr and Mrs Carter's case and Mrs E's case.

62.13 In the latter part of 2009, after the Respondent had finished working at Waterside House and had completed all client matters, he stated Law of Property Act ("LPA") Receivers were appointed over the premises at Waterside House and the premises were later broken into. Office furniture and equipment was taken, and the firm's records and files disappeared. The Respondent did not know whether they had disappeared as a result of the burglary or as part of the receivers clearing out the property. The Respondent stated he reported the missing files to the managing agent/landlord in November 2009 but the matter had never been resolved.

62.14 The Respondent stated he did not receive any correspondence from Mr Beddoes. He stated that this may have been because the period of redirection had expired or his mobile phone account had been discontinued sometime in 2009. He stated he had not been using the email address provided by Mr Beddoes and Ms Whatmore. He also said that he had never lived at either R Way or B Lane. The Respondent stated that the letter dated 10 May 2011 had been sent to the address of his elderly father who suffered from dementia and who appeared to have signed the delivery receipt. The Respondent stated his father did not give him that letter and it did not come to his attention. Accordingly he had not contacted Ms Whatmore as requested.

62.15 On cross-examination the Respondent confirmed that he had decided by early 2009 that he would not renew the lease on his premises at Notre Dame Mews when the lease expired in August. He stated he visited Waterside House a handful of times and he could not recall if he had a permanent address at that time. The Respondent stated he had a good friend with a large storage facility who would let him know if there was any post for the Respondent to collect. The Respondent confirmed his firm’s telephone lines were diverted to his mobile phone for three months which he thought was sufficient. He could not recollect which mobile number he had used. The Respondent stated his solicitor notified the SRA of the closure of the firm in 2009.

62.16 In relation to the burglary, the Respondent stated the burglary had taken place at the premises in about November 2009. He stated he had reported this to his insurers but not to the police because he considered there was nothing of value to him which had not been covered by the insurance. In hindsight the Respondent accepted he should have notified the police as well. He stated that his personal papers had been removed with some equipment including a laptop. He stated the laptop had broken just before the burglary, and did not contain any of the firm’s accounts information on it in any event.

62.17 During cross-examination, the Respondent stated that although computers had been taken in the burglary, he did not think his boxes of papers had been stolen as they were of no value to anyone. However, he did not check for the boxes at the time of the burglary in around November 2009. He believed they were in a locked and secure room which could not be accessed but subsequently found out that in fact the room where they were being stored was a walkway to gain access to other areas.

62.18 Mr Parker on behalf of the Respondent referred the Tribunal to the Rule 5 Statement and submitted only paragraph 5 of that statement dealt with a breach of Rule 20.05(1) in that it made reference to the Legal Complaints Service being informed that clients were unable to contact the Respondent. Mr Parker submitted the Rule 5 Statement did not address Rule 20.05(b) which required solicitors to notify the SRA of any changes to relevant information about them or their firm. It had not been alleged anywhere in the Rule 5 Statement that the Respondent should have notified the SRA of any change of address and Mr Parker submitted that it was not for the Respondent to piece, from a Rule 5 Statement, which parts of Rule 20.05 were alleged to have been breached. Mr Parker further submitted that the Respondent had not been asked during his evidence about the attempts he had made to notify the SRA of his change of address details.

62.19 In relation to Rule 20.08 Mr Parker submitted that the SRA's Notice has been sent to the Respondent's elderly ill father's address and had not come to the Respondent's attention. As the Notice had not reached the Respondent, it could not be said that he had failed to comply with it.

62.20 The Tribunal considered all the documents and the evidence it had heard. The Tribunal found Mr Beddoes' evidence unhelpful and was of the view that his evidence had been somewhat unprofessional for an intervention agent. He had been argumentative and less than dispassionate. His evidence had not assisted the Tribunal at all.

62.21 The Tribunal had not been provided with any evidence that the emails and letters sent to the Respondent by Mr Beddoes had been received by him. The Tribunal accepted Mr Parker's submissions in relation to this issue. The Tribunal accepted that the Rule 5 Statement did not make any reference to a breach of Rule 20.05(2)(b) despite this being relied upon by Ms Wingfield in her Skeleton Argument and closing submissions. The Tribunal accordingly found the Applicant had not proved the Respondent had breached Rule 20.05.

62.22 In relation to Rule 20.08, the Notice sent by Ms Whatmore dated 10 May 2011 had been sent to an email address held by the SRA for the Respondent. Ms Whatmore had not been challenged on whether the address to which she sent that letter had been the Respondent's last known address. The Respondent himself accepted the letter had been delivered and indeed signed for by his father, although his father was ill and had not passed the letter to him.

62.23 The Tribunal noted Rule 20.08(4) stated that a Notice was deemed to be duly served seven days after it had been sent by post to the solicitor's last notified practising address. A solicitor was a professional who had a duty to provide an address to his regulator for the purposes of communication. The Tribunal took the view that the Notice had been properly served on the Respondent in circumstances where it was sent to his last known address. It was a matter for the Respondent to ensure he was properly monitoring the receipt of post at that address or had made arrangements to do so. The Respondent accepted that he knew by March 2010 of the intervention of his firm and he should therefore have been aware that the SRA would be trying to contact him. In view of the fact that the Notice had been properly served, the Tribunal was satisfied the Respondent had failed to comply with that Notice and had therefore breached Rule 20.08(4) of the SCC.

62.24 Accordingly, the Tribunal found Allegation 1.3 proved but only in relation to a breach of Rule 20.08 of the SCC.

63. Allegation 1.4: It was alleged the Respondent had acted dishonestly.

63.1 An allegation of dishonesty had been made in the Rule 5 Statement. In her closing submissions, Ms Wingfield had alleged the Respondent had acted dishonestly on the matters concerning both Mrs W and Mr and Mrs Carter. The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the

ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

63.2 In relation to Mrs W, Ms Wingfield submitted the transaction had clearly been fraudulent in view of the fact that the Respondent knew Mr D was a disqualified director and indeed, had made a suspicious activity report to SOCA. Despite this, the Respondent had retained the sum of £85,726 from monies received for this transaction in settlement of his own purported fees and disbursements. The Statement of Account indicated his fees were £1,950 plus VAT for this transaction. The Respondent had suggested in his witness statement dated 7 October 2013 that his agreed fee for the transaction was 3.5% which came to £56,000.

63.3 Ms Wingfield submitted that if the Respondent had, as he alleged, undertaken work on a retainer basis for Mr D, then three days work per week over a three month period at a rate of £200 per hour would amount to £43,200. If he had done four days work over the same period that would amount £57,600. However, the Respondent had taken in excess of £85,000 in three months. Ms Wingfield submitted this conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent himself knew his conduct was dishonest.

63.4 On the matter of Mr and Mrs Carter, Ms Wingfield submitted the Respondent had retained the clients' funds in the sum of almost £36,000 without even notifying the clients of receipt of this money and without having delivered invoices to the clients. He had made round sum transfers from his client account to his office account at a time when the office account was overdrawn and had utilised the monies to meet office expenses. She submitted this conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent himself knew his conduct was dishonest.

63.5 In relation to the transaction concerning Mrs W, Ms Whatmore, when giving evidence, confirmed that the file she had received from the police had two business cards for Mr D, one was a personal business card which included a UK address, and the second business card referred to AC. Ms Whatmore confirmed that Mr D had been disqualified as a director from 12 June 2007 to 11 June 2021.

63.6 Mr Parker, on behalf of the Respondent, submitted that as the allegation of dishonesty had not been put to the Respondent during cross-examination, it failed because he had not been given an opportunity to answer that allegation. The Tribunal was provided with a copy of the case of The Mayor and Burgesses of the London Borough of Haringey v Hines [2010] EWCA Civ 111. LJ Rimer had stated in that case:

> "It is a basic principle of fairness that if a party is being accused of fraud, and is then called as a witness, the particular fraud alleged should be put to that party so that he/she may answer it…….
>
> Thus it is the case that before a finding of dishonesty can be made it must not only be pleaded, but also put in cross-examination."

63.7 If the Tribunal did not agree with this submission, then Mr Parker submitted that dishonesty was not proved as the second part of the test, the subjective element, had not been put to the Respondent and there was no evidence of his state of mind at the time of the conduct.

63.8 In relation to the matters concerning Mrs W, the Respondent had given evidence on how the amount of £85,726 had been calculated which was by agreement with proper bills. Mr Parker submitted the Tribunal could not be satisfied so that it was sure that the decision to make a payment to himself of £85,726 was dishonest bearing in mind all the cautious steps he had taken prior to making the payment. He had made two SOCA reports, he had notified the police and sought guidance from the Law Society. He had transferred the funds in the knowledge that part of the money would be properly investigated by a number of different authorities. Mr Parker submitted the Respondent would have had to have been very stupid to have behaved dishonestly in these circumstances.

63.9 In relation to Mr and Mrs Carter, Mr Parker submitted that it was quite clear the clients were behind on the payments on account of costs. The monies received by the Respondent were earmarked for costs. Mr Parker submitted that the Respondent had not been asked about the invoice of 6 March 2006, which Mr Carter did not recall receiving. Nor was the Respondent asked about the costs figure given in the letter from A Legal Costs dated 25 September 2009. Whilst the Respondent had accepted he had made some round sum transfers, he had tried to ensure client funds remained in client account to meet future disbursements and expenses. Mr Parker submitted this was not dishonest behaviour and indeed, the Respondent had thought he was doing his clients a big favour.

63.10 The Tribunal firstly considered the preliminary point made by Mr Parker that, as the allegation of dishonesty had not been put to the Respondent during cross-examination, this allegation failed. The Tribunal considered the case of The Mayor and Burgesses of the London Borough of Haringey v Hines and noted that in that case LJ Rimer had referred to the case of Dempster v HMRC [2008] STC 2079 in which Briggs J had stated:

> ".. it is a cardinal principle of litigation that if a serious allegation, in particular allegations of dishonesty are to be made against a party who is called as a witness they must be both fairly and squarely pleaded, and fairly and squarely put to that witness in cross-examination."

63.11 The Tribunal reiterated its view that there were instances where allegations of dishonesty were made and were found proved in circumstances where the respondents either did not appear before the Tribunal, or chose not to give any evidence at all. It would not be in the public interest, or in the interests of justice, to state that there was a prohibition in disciplinary proceedings on any finding of dishonesty being made where an allegation of dishonesty had not been put to a respondent in cross-examination. If that were the position, any respondent would escape a finding of dishonesty by simply choosing not to be exposed to cross-examination. Each case must be considered on its facts. In most cases it would be necessary for an allegation of dishonesty to be put to a respondent in cross-examination, for the Tribunal to be

able to consider the subjective element in the Twinsectra case, but there must be cases where the facts would speak for themselves.

63.12 The Tribunal was mindful that in this particular case dishonesty had been clearly alleged in the Rule 5 Statement and referred to in a number of other documents. Furthermore it had been responded to in the Respondent's witness statements and in his Skeleton Argument. It was clear to all the parties that such an allegation was very much an issue, indeed it was the central issue. It was abundantly obvious to the Tribunal that even if such an allegation had been put to the Respondent in cross-examination he would have simply denied it, as that was his position in his witness statements. The Tribunal concluded that an allegation of dishonesty in this particular case did not automatically fail, simply because the Respondent had not been asked about it in his cross-examination and rejected Mr Parker's submission on this point. All the points of fact had been dealt with in a lengthy cross examination, and the reasons for each allegedly dishonest action of the Respondent explored with him. That the one final question - "So you were dishonest?" was not put, did not mean that, in the particular circumstances of this case where dishonesty was always a central allegation to the front of the minds of both Applicant and Respondent, the Respondent had not had the opportunity to put his side of the case, nor that the Tribunal's ability to judge the Respondent's subjective state of mind was reduced.

63.13 The Tribunal then considered the allegation of dishonesty in relation to the matter concerning Mrs W. The Rule 5 Statement clearly set out the basis upon which dishonesty was alleged on this case. It was alleged the Respondent had acted dishonestly as he had retained the sum of £85,726 for fees and disbursements when, according to the Statement of Account, his fees were £1,950 plus VAT, and the majority of the balance would have related to disbursements payable on completion which did not occur. This was a different basis to the basis upon which it had been alleged that the Respondent had acted with a lack of integrity in relation to this client.

63.14 In Mrs W's case the Tribunal had been satisfied that the Respondent had transferred the sum of £85,726 from the client account to the office account without providing Mrs W with any bills or notification of costs. The Tribunal had already rejected the Respondent's explanations on the total amount of his outstanding costs having found them to be inconsistent and contradictory. Initially the Respondent claimed he had agreed a fixed retainer of £150,000 per annum with Mr D, then later he said he had agreed a minimum retainer of £150,000 per annum to be billed on a transaction basis in addition to which there was to be a fee of 3.5% of the purchase price of the property. Furthermore, Mrs W's file contained a Statement of Account which indicated the fee for the purchase of the property was £1,950 plus VAT although the Respondent claimed this was not a final invoice. The Respondent had given no credible explanation as to how the fees of £85,726 had accrued.

63.15 The Tribunal had found it was very unlikely that the Respondent could have carried out sufficient work over such a short period of four months, during which time he had been instructed by Mrs W, to justify taking the sum of £85,726 for his fees. The Tribunal was satisfied that the Respondent's conduct, in retaining £85,726 for fees and disbursements in circumstances where the (draft or otherwise) Statement of Account on the file showed his fees to be £1,950 plus VAT, would be conduct regarded as dishonest by the ordinary standards of reasonable and honest people. The

Tribunal found the first objective part of the test for dishonesty referred to in Twinsectra v Yardley to be proved.

63.16 The Tribunal then went on to consider whether the Respondent himself realised that by those standards his conduct was dishonest. Although the Respondent had not been able to give the Tribunal any credible explanation as to how the fees of £85,726 had accrued, he had maintained that he had done a great deal of work for Mr D over and above the purchase of the property transaction. Monies on Mrs W's file had been received from Mr D or his associated companies. Whilst there was uncertainty about the actual work that had been done, the Tribunal noted there did not appear to have been any complaint from Mrs W about the fees taken. The Respondent had obtained permission from the police to deduct such fee as may have been due in circumstances where he had made at least one SOCA report and sought advice from the Law Society. He knew that there were people who may have been defrauded, who may be claiming the £1.5m, and may have an interest in the amount deducted by him. There was no attempt to conceal the transfer which was transparent to the police and to the lawyers for those who may have been defrauded. The Tribunal concluded that it could not be satisfied to the requisite standard that the Respondent knew that his conduct was dishonest by the ordinary standards of reasonable and honest people. Having not found the second subjective part of the test for dishonesty in Twinsectra v Yardley proved, the Tribunal concluded that the Applicant had not proved the Respondent had acted dishonestly in relation to Mrs W.

63.17 The Tribunal went on to consider the allegation of dishonesty in relation to Mr and Mrs Carter. The Applicant alleged in the Rule 5 Statement that the Respondent had acted dishonestly in this matter because he had retained the sum of £35,794.92 for legal costs which were due to Mr and Mrs Carter, and that he had utilised money paid on account of costs to make office payments when insufficient funds were available in the office account, without delivering invoices to his clients.

63.18 The Tribunal had already found that the Respondent had withdrawn money from his client account in the absence of having provided any written notification of costs to Mr and Mrs Carter. However, the Tribunal was mindful that it was clear on the documentary evidence that a large amount of work had been carried out on Mr and Mrs Carter's case. Indeed the letter from A Legal Costs indicated the overall costs of the case were £146,289.71, although this did cover the costs of three firms of solicitors. The Respondent had clearly received various funds on account of costs from the clients but there was an issue about whether these funds were less than the overall costs that the Respondent claimed he was entitled to.

63.19 Whilst the manner in which the Respondent had transferred Mr and Mrs Carter's money to his office account was subject to a large amount of criticism, and there had been breaches of the Solicitors Accounts Rules, the Tribunal accepted that any shortfall in the costs due could only have been paid by the opponents involved in Mr and Mrs Carter's litigation. Although the clients had expected to receive the sum of £35,794.92, it was apparent from Mr Carter's evidence that he had not realised the litigation would cost as much as it eventually did, and the Tribunal accepted the Respondent's case that the total costs properly recoverable from Mr and Mrs Carter would exceed the amount that had been paid on account.

63.20 Having considered Mr and Mrs Carter's matter, in spite of the fact that the Tribunal had found parts of the Respondent's evidence to be implausible, particularly in relation to his explanations concerning the bill of costs for £41,000 which he allegedly gave to Mrs Carter at the Court of Appeal, and the amounts he had subsequently transferred to his office account, the Tribunal was not satisfied to the requisite standard that the Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal therefore did not find that the Respondent had acted dishonestly in relation to Mr and Mrs Carter.

Previous Disciplinary Matters

64. The Respondent had appeared before the Tribunal on two previous occasions on 18 June 2009 and 19 October 2010.

Mitigation

65. Mr Parker, on behalf of the Respondent, referred the Tribunal to the case of Gilchrist v The Law Society [2001] EWHC Admin 122 and submitted the Tribunal should consider the previous allegations from the Respondent's appearance in October 2010 with the allegations before the Tribunal now. He submitted there was a significant overlap in the time and conduct of matters dealt with in October 2010 and that therefore the sanction in October 2010 should be considered along with the current conduct so that the Respondent's previous appearances would be regarded as one previous appearance and not two. In the case of Gilchrist v The Law Society LJ Rose had stated:

> "There are, in my judgment, two exceptional reasons why, in this case, this court should interfere. The first and most important is that these matters, separately considered in April 1999 and December 1999, ought properly, and in fairness to everyone, to have been considered by a single Tribunal. It is to be noted that not only was there the overlap in terms of time and conduct to which I have already referred, but there were, on the first occasion, 12 offences of which the appellant was found guilty by the Tribunal, and on the second occasion there were but five. That, of itself, of course, is not determinative of what should be the appropriate sentence; all the circumstances have to be looked at. But it is a matter for comment that for the first Tribunal a suspension of 12 months was thought appropriate for those 12 offences and a suspension of four years was thought appropriate for five offences relating to conduct which in many respects was of a similar kind."

66. Mr Parker accepted that if the Respondent was considered to have appeared twice before the Tribunal previously, then having been suspended in October 2010, a third appearance left the Tribunal with little option. When the Respondent had appeared before the Tribunal in June 2009, this had related to conduct from 2007/2008. Part of the allegations related to accounts breaches and had led to the Respondent's decision to close his practice, as he realised he could not cope with running a practice.

67. By the time the Respondent appeared again before the Tribunal in October 2010, his practice had closed down and the allegations he faced related to his failure to cooperate with the Legal Complaints Service and the SRA and diminishing public

confidence by virtue of the manner in which he had closed his practice. There were also matters concerning an undertaking which had been breached by a member of the Respondent's staff and his failure to comply with court orders during April to July 2009, which was the same period relating to matters before the Tribunal today. Mr Parker submitted there was a consistent theme of the Respondent burying his head in the sand due to his inability to cope with the financial aspects of his practice. It was accepted that he had got things wrong but it was submitted that the Tribunal should consider his conduct from his personal perspective in 2008/2009, which had been a difficult time for him. Mr Parker submitted that this should be taken as a second appearance and not a third.

68. Mr Parker submitted the Respondent just simply could not cope at the time and the Tribunal was asked to view him with a degree of sympathy given the challenges he had faced during the twelve month period in 2009/2010. The Tribunal was referred to a number of references provided and it was submitted the Respondent deserved a chance to continue working in the profession at some point in the future. The Respondent was deeply regretful about the matters which had occurred and, although he did not intend to practise for a while, he did want to be able to practise again in the future. It was further submitted that if all the matters from the Respondent's appearance in 2010 had been before the Tribunal today, these would not lead to the ultimate sanction being imposed. The Tribunal was provided with details of the Respondent's means which were contained in his witness statements dated 25 October 2013 and 16 May 2014.

69. In relation to the principle in the case of Gilchrist v The Law Society, Ms Wingfield for the Applicant informed the Tribunal that the matters before the Tribunal today had not come to light until a considerable time after his last appearance before the Tribunal, and therefore it had not been possible to deal with all matters together, even though it would have been preferable to do so. The Forensic Investigation Report was dated 2011 and had dealt with different transactions from those referred to in the 2010 appearance. It was accepted that all the conduct took place at the same time and that the Respondent had been under some stress during that period. Ms Wingfield submitted the matters found proved by the Tribunal today were very serious matters that did not relate simply to the stress of closing down the business and that therefore the Tribunal should consider the Respondent as having had two previous appearances and not one. Furthermore, Ms Wingfield reminded the Tribunal that it had not heard any of the evidence or submissions made in 2010 and would therefore be in considerable difficulty in considering those matters today. Ms Wingfield submitted that even if all the allegations from 2010 and today were considered together, they were still extremely serious indeed, and would still lead to the ultimate sanction.

Sanction

70. The Tribunal had considered carefully the Respondent's submissions, evidence and statements. The Tribunal took into account the references provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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 Tribunal took into account the mitigating and aggravating factors in this case.

71. The Tribunal considered very carefully the decisions of the previous Tribunals dated 18 June 2009 and 19 October 2010. In June 2009 the allegations found proved against the Respondent included a failure to pay Counsels' fees when they fell due, a failure to comply with directions from the SRA, a failure to deal with the SRA in an open, prompt and cooperative way, a number of breaches of the Solicitors Accounts Rules and a failure to provide a mortgagee client with relevant information. On that occasion the Respondent was fined £5,000.

72. At the second appearance before the Tribunal in October 2010, the Respondent admitted allegations of failing to deal with the Legal Complaints Service and the SRA in an open, prompt and cooperative way, behaving in a way likely to diminish the public confidence by virtue of the manner in which he closed his practice, breaching a professional undertaking and failing to comply with Court Orders. The conduct complained of covered a period from September 2006 until November 2009. Whilst there was some overlap with the time period of the allegations before the Tribunal today, the allegations in October 2010 were of a different nature. The Tribunal was also mindful that, although investigations into Mr and Mrs Carter and Mrs E's matters had commenced, (as a result of those clients – the lender in the case of Mrs E – contacting the Intervention Agent) they were in the early stages and there would have been no certainty as to how long those investigations would take or whether the outcome would lead to additional allegations against the Respondent. The matter of Mrs W had not come to light by October 2010. Therefore these cases could not have been pursued at that time. Indeed, the file relating to Mrs W came to light after the police were involved, and the files for Mr and Mrs Carter, and Mrs E could not be found. In such circumstances, the Tribunal failed to see how those matters could have been pursued at that time.

73. The Tribunal was also mindful that in the case of <u>Gilchrist v The Law Society</u> the two Tribunal appearances were much closer together being April 1999 and December 1999, whereas in the matter concerning the Respondent, there was a significant gap of three years between the October 2010 appearance and the date of the commencement of the substantive hearing in this case in October 2013. The nature of the allegations before the Tribunal today was also different from the type of allegations considered by the previous Tribunal in October 2010. Nevertheless, the Tribunal did bear in mind that the conduct relating to Mrs W, Mr and Mrs Carter and Mrs E did overlap the period of time of the conduct referred to in October 2010.

74. The Tribunal considered very carefully the facts found proved in this case. The Tribunal had found the Respondent had failed to inform his clients that money had been paid into his client account and had then taken that money in payment of his costs without their knowledge. The Tribunal had also found that the Respondent had transferred funds from client account to office account without providing notification of bills to clients. The Tribunal had found a number of accounts breaches and had been concerned that the Respondent had given a client file, including his lender client's Charge, to a third party without informing or obtaining the consent of the lender. Whilst the Tribunal accepted the Respondent may have had difficult financial circumstances at the time, the Tribunal noted the Respondent, in giving his evidence to this Tribunal, had not tried to assist the Tribunal in understanding his circumstances at that time.

75. The Respondent had reported matters concerning Mr D to the police and this was a mitigating factor in his favour. However, there were a number of aggravating factors. The Tribunal had not found the Respondent's evidence to be credible in relation to a number of matters and indeed, had found it to be inconsistent, contradictory and implausible at times.

76. The Tribunal having considered the decisions of the previous Tribunals found that they cast further doubt on the Respondent's credibility. In his evidence to this Tribunal the Respondent had stated he had an overdraft facility of £10,000 within which he had managed his finances and had mortgaged his property twice but that he had no particular need for loans. He gave no indication of his severe financial problems at the time of the conduct this Tribunal was dealing with. However, it was clear from the decision of the Tribunal in October 2010, that at that same time the Respondent had borrowed money from his brother to try and recover his repossessed property. The Respondent had not alluded to this at all when giving his evidence to this Tribunal. The picture he painted of his firm's finances in the 2010 proceedings was completely inconsistent with the evidence he had given before this Tribunal. At that time he said that he owed money whereas before this Tribunal he claimed to have no need for borrowings. The Tribunal had not been assisted by the Respondent's brevity in answering questions in cross examination and his lack of detailed memory on important issues. When asked what the firm's turnover was he said that he did not know and when asked what drawings he took he was not sure but surmised that they would have been between £2,000 and £4,000 per month.

77. The Tribunal had found that the Respondent had acted with a lack of integrity in relation to Mr and Mrs Carter and Mrs E. He had not dealt with Mr and Mrs Carter in a straightforward manner, having failed to inform them of the receipt of funds which he then transferred to his office account without notifying them first. In the matter of Mrs E he had put the lender client's interest at risk by releasing the original file to a third party without the lender's knowledge or consent. There was a consistent theme throughout all of the disciplinary proceedings of the Respondent's conduct of failing to co-operate with the regulator. This was not acceptable and made it difficult for the regulator to carry out its regulatory duties.

78. The Tribunal took into account the case of <u>Bolton v The Law Society</u> [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."

79. The First Respondent's conduct had caused a great deal of damage to the reputation of the profession and had placed the public at risk. The Tribunal was satisfied that,

even considering the matters before it without reference to the previous appearance in October 2010, the Respondent's conduct was so serious that the appropriate sanction in this case was to strike the Respondent's name from the Roll of Solicitors.

Costs

80. Ms Wingfield for the Applicant requested an Order for costs in the total sum of £48,296.13 and provided the Tribunal with a breakdown of those costs. She confirmed these costs did not include any claim for the costs relating to her application to recall the Respondent.

81. Mr Parker, on behalf of the Respondent, submitted the costs claimed were too high. The Respondent had been absolved of guilt in certain respects and most significantly of the allegation of dishonesty, which had been the most serious allegation and on which a great deal of time had been spent by both parties. That allegation had failed.

82. Mr Parker also submitted that the Applicant's Schedule included costs for repetitive work incurred due to the adjournments that had taken place since October 2013. Although these had been through no fault of either party Mr Parker submitted they should not fall on the Respondent. There was also a claim for costs of £3,789.50 which appeared to be the costs incurred from the date of the last hearing in January 2014 to today. As the Applicant had stated these did not include the costs of the application to recall the Respondent Mr Parker found it surprising that the costs were so high. Mr Parker stated his instructing solicitor had received 4 letters so it was not clear what all the costs related to. Mr Parker also submitted that any order for costs should not be enforceable without leave of the Tribunal given the Respondent's current financial circumstances which meant that he did not have the means to pay any costs order.

83 Mr Parker also confirmed the Respondent requested an order for his own costs relating to the Applicant's application to recall him, which had been unsuccessful. The Tribunal was provided with a breakdown of those costs which amounted to £13,432.40. These related to the work carried out in analysing the Applicant's application, preparing a response and assessing the merits of that application including the case law. Mr Parker made it clear that his application for costs was made on behalf of the Respondent's insurers and accordingly, he requested that there should not be any order to set off the Respondent's costs against the Applicant's costs. The Respondent had the benefit of insurance to cover the disciplinary proceedings but this did not include any adverse costs order or fine made against the Respondent. If the Tribunal made an order setting off the Respondent's costs against the Applicant's costs, then effectively the Respondent would gain the benefit of a reduction in the costs that he was ultimately required to pay to the Applicant, which would be an unfair outcome.

84. Ms Wingfield submitted the Respondent's costs claimed were high. She had been handed the Respondent's Schedule that afternoon. The hearing of the application had lasted about an hour, yet the Respondent had claimed five hours. That time would have been incurred in any event as the parties were required to attend before the Tribunal today in relation to the substantive matter regardless of the application that had been made. There was considerable duplication as two fee earners had been

involved, as well as Counsel. Ms Wingfield had received only four letters from the Respondent's solicitors. The Schedule indicated that a solicitor had spent some 3.8 hours communicating/attending the Respondent, a partner of the practice had also spent time communicating with the Respondent and in addition, there was a claim for Counsel attending the Respondent. There was reference to communication with the Tribunal of 1.2 hours with no explanation as to what this related to.

85. The Tribunal considered carefully the matter of costs. Dealing firstly with the Applicant's claim for costs, the Tribunal was satisfied that all the allegations had been properly brought. The Tribunal was not prepared to make any reduction to the costs on the basis that some allegations had not been proved. However, the Tribunal was of the view that the costs claimed were high and did include some element of duplication. Although the adjournments had been caused through no fault of either party, the costs claimed by the Applicant for the period January 2014 to today did appear to be high. The final day of the hearing had only taken one day rather than the two days which had been claimed. The Tribunal considered the costs of the SRA investigation to be high, particularly in a case where documentation was limited. The Tribunal, having made reductions for these matters, assessed the Applicant's costs in the sum of £40,000 and ordered the Respondent to pay this amount.

86. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided two Statements of Means indicating he had very limited finances. He owned a property that was subject to a number of Charges/restrictions and he had been subject to repossession proceedings. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay costs. The Respondent's livelihood had been removed as a result of the Tribunal's Order. In the circumstances, the Tribunal Ordered that the Order for the Respondent to pay the Applicant's costs was not to be enforced without leave of the Tribunal.

87. The Tribunal then considered the Respondent's claim for his costs relating to the application to recall him. This application had been made by the Applicant as a result of an omission by the Applicant during cross-examination. The application had failed. It was made due to no fault of the Respondent. The Tribunal was satisfied that in such circumstances, the Respondent was entitled to the additional costs he had incurred in defending that application.

88. However, the Tribunal found the amount of costs claimed by the Respondent in relation to this one application to be astonishingly high. The matter had concerned a discrete point of law and the Tribunal was mindful that the Respondent's Counsel would have been attending before the Tribunal today anyway to deal with the substantive hearing in any event. The costs of travel and waiting were therefore not allowed. The Tribunal was not prepared to make any award for the costs of a solicitor attending, bearing in mind the Respondent was represented by Counsel. There was a huge amount of duplication in the costs claimed which included the fees for a solicitor, a partner, and then separately Counsel on a variety of instances which the Tribunal did not allow. Having made deductions as indicated, the Tribunal assessed the Respondent's costs on the application to recall him in the sum of £5,000. Bearing in mind the Respondent had the benefit of insurance for the disciplinary proceedings,

and the costs claimed were those incurred by his insurers, the Tribunal made it clear that such amount was to be paid by the Applicant to the Respondent's solicitors within 28 days for the benefit of the insurers, and not to the Respondent himself.

Statement of Full Order

89. The Tribunal Ordered that the Respondent, Terence James Synnott, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00, such costs not to be enforced without leave of the Tribunal.

The Tribunal also made an Order for the Applicant to pay the Respondent's costs of £5,000 to the Respondent's Solicitors within 28 days.

DATED this 9th day of July 2014
On behalf of the Tribunal

N. Lucking
Chairman