The Respondent appealed to the High Court (Divisional Court) against the Tribunal's decision dated 21 May 2014 in respect of findings only. The appeal was heard by Lord Justice Hamblen and Mr Justice Holroyde on 16 November 2016. Judgment was handed down on 26 January 2017. The appeal was dismissed with costs summarily assessed by the Divisional Court at £45,110.22 payable by the Respondent to the Applicant. Sancheti v Solicitors Regulation Authority [2017] EWHC 86 (Admin.)
On 28 November 2017 the Rt. Hon. Lord Justice Flaux refused the Respondent's application for a second appeal to the Court of Appeal on the papers on the grounds that the grounds of appeal have no real prospects of success and are without merit.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11143-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ASHOK KUMAR SANCHETI Respondent

Before:

Mr J. C. Chesterton (in the chair)
Ms A.E. Banks
Mrs L. Barnett

Date of Hearing: 7-9 April 2014

Appearances

Geoffrey Williams QC, Counsel, of Farrar's Building, Temple, London EC4Y 7BD (instructed by James Dunn of Devonshires Solicitors, London) for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent contained in a Rule 5 Statement dated 28 March 2013 were that he had:

1.1 Breached the terms of a professional undertaking given on 18 December 2009 and varied on or about 17 September 2010 contrary to Rule 10.05 of the Solicitors' Code of Conduct 2007 ("SCC"). Allegation 1.1 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved;

1.2 Failed to account for funds held pursuant to the said undertaking contrary to Rules 1.04 and 1.06 SCC. Allegation 1.2 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved;

1.3 Failed to comply with an Order of the High Court contrary to Rule 1.01 SCC;

1.4 Failed to maintain properly written up books of account contrary to Rule 32(1) Solicitors' Accounts Rules 1998 ("SAR").

Further allegations against the Respondent contained in a Rule 7 Supplementary Statement dated 11 October 2013 were that he had:

1.5 Failed to maintain a client bank account contrary to Rule 14 SAR;

1.6 Failed to pay client money received into a client account without delay contrary to Rule 15 SAR;

1.7 Wrongly paid away funds held to the order of a third party contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC. Allegation 1.7 in respect of Mr G's matter only is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved;

1.8 Failed to properly apply funds received from a client to effect the settlement of a civil dispute contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC.

1.9 Failed to discharge a liability for Stamp Duty having received funds from a client for that express purpose contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC;

1.10 Failed to properly account to third parties and to clients for funds received by him from those parties contrary to Rules 1.05 and 1.06 SCC. Allegation 1.10 in respect of Mr G's matter only is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved

Documents

2. In addition to Case Memoranda issued by the Solicitors Disciplinary Tribunal during the course of the proceedings, the Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant

- Application and Rule 5 Statement dated 28 March 2013 and Exhibit "GW1";
- Rule 7 Supplementary Statement dated 11 October 2013 and Exhibit "GW2";
- Bundle of Solicitors Regulation Authority ("SRA") Witness Statements served on 16 December 2013;
- Bundle of SRA Witness Statements served on 10 March 2014;
- SRA Discovery Bundle dispatched on 19 February 2014 and received on 24 February 2014;
- Applicant's Skeleton Argument dated 27 March 2014;
- Travel itinerary and supporting documents (handed up during the course of the hearing);
- Applicant's undated Statement of Costs (handed up during the course of the hearing.

Respondent

- E-mails and documents sent by the Respondent during the course of these proceedings, including documents exhibited to the Respondent's various interlocutory applications, but excluding the "Draft Response" dated 24 February 2014 submitted by the Respondent but not perfected;
- E-mail from the Respondent to the Tribunal and the solicitor for the Applicant dated 4 April 2014 timed at 17:29.

Opening Statement by Tribunal Chairman

3. For the record the Chairman introduced himself and his colleagues on the Tribunal as named in the heading of these proceedings. He stated that the Solicitors Disciplinary Tribunal is independent of The Law Society and the SRA. He confirmed that the allegations against the Respondent would be considered in accordance with the requirements of the Human Rights Act 1998. The Respondent had made no admissions in respect of the allegations which must therefore be proved by the Applicant beyond reasonable doubt. The Tribunal had read the papers in advance of the hearing.

Preliminary Matter

4. The Respondent did not attend the hearing and was not represented. He was understood to be living in India, and had participated in the proceedings before the Tribunal by means of the submission of e-mails with attachments.

5. Mr Williams, Counsel for the Applicant, applied for an order under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") that the hearing of the Application should proceed in the absence of the Respondent. Rule 16(2) SDPR required the Tribunal to be satisfied that the Notice of Hearing had been served on the Respondent in accordance with the SDPR. If the Tribunal was so satisfied, the same Rule gave the Tribunal power to proceed in the Respondent's absence.

6. Mr Williams relied on submissions in support of the application summarised below:

- The Rule 5 Statement was served on the Respondent on 18 April 2013. The Rule 7 Supplementary Statement was served by the Tribunal by e-mail in October 2013. More particularly it was sent by post to the Respondent by the Applicant and the Tribunal on 18 December 2013;

- On 11 December 2013, the Tribunal sent a Notice to the Respondent by e-mail confirming this hearing date. The Respondent regularly corresponded by e-mail and as a consequence it could therefore be assumed that service of the Notice of Hearing had been properly effected;

- There had been subsequent e-mails and Tribunal Memoranda making reference to this hearing date, in particular the Memorandum of Case Management Hearing ("CMH") dated 10 February 2014;

- The Respondent had provided reasons for his absence from the hearing. The first reason contained in his e-mail dated 4 April 2014 timed at 10:26 was "I do not have a ticket to travel". At 17:29 on the same day, he sent a further e-mail stating that "in absence of suitable travel arrangements being made I am unable to be available in London";

- Throughout these proceedings the Applicant was conscious of the need to ensure that the Respondent received a fair trial. He had professed to be living in India without means. At the CMH on 10 February 2014, the Tribunal made directions, upon the Applicant undertaking to "procure, in advance of the hearing on 7 April 2014, for the Respondent air travel tickets and hotel accommodation and provide the Respondent with a sum to cover his reasonable subsistence expenses for the period 5 April 2014 to 13 April 2014 inclusive, together with any additional days if the hearing should last longer than 5 days, and the Respondent having indicated in his Skeleton Argument that he agrees to the proposal as an alternative to his request for a final hearing to be heard by video link";

- Travel tickets were supplied to the Respondent. In an interlocutory application as recently as last week the Tribunal was provided with a copy letter from Devonshires, solicitors for the Applicant, to the Respondent dated 4 March 2014. An earlier e-mail from Devonshires to the Respondent had given email links to tickets and specified that hard copies of the Respondent's air ticket and hotel booking confirmation would be sent to him by post and this letter referred to copies being attached to the letter together with the e-mail (seen by the Tribunal) describing the itinerary. The itinerary confirmed that air tickets had been booked with Qatar Airways with return dates and details of the booking at the Holiday Inn Bloomsbury for room, breakfast and dinner for the relevant period. The e-mail confirmed that the SRA would cover the cost of lunch and the Respondent was asked for his bank details so that expenses could be paid into his account in advance. The requested bank details were never provided;

- The Respondent's suggestion on 4 April 2014 that he did not have a ticket to travel was untrue. The Respondent's specific objection to the

arrangements made for him, namely that the selected airline and economy class travel were "unsuitable", was unacceptable to the Applicant. The arrangements made were not unsuitable: economy class travel was a common form of transport for many people;

- If the Applicant's application to proceed in the absence of the Respondent was refused by the Tribunal, the inevitable consequence would be that this 5 day hearing would have to be adjourned. The Statements of Facts were served on the Respondent some time ago and he had been aware of the hearing date also for some considerable time. On 16 October 2013, the Respondent was directed by the Tribunal to file an Answer to the Rule 5 Statement; he had not done so. The Direction was repeated on 29 November 2013 and in respect of both the Rule 5 and Rule 7 Statements on 10 February 2014. There was no compliance. In the Tribunal's Memorandum of 21 February 2014, the Respondent's failure to "consider and provide" his Answer was described by the Tribunal as "a matter of concern". The Respondent had provided what he called a "draft response". That draft response had not been put before the Tribunal by the Applicant and the Tribunal Chairman confirmed that it was not appropriate for the Tribunal to see a draft document;

- The substantial correspondence between the Respondent and the Tribunal made it very clear that the former was well aware of the hearing date. Further, it indicated that he had "flouted" the directions made by the Tribunal. His only engagement had been by way of attempts to derail rather than dispatch the proceedings;

- The absence of the Respondent was a voluntary absence. An adjournment of the proceedings would serve no purpose: the Respondent had not engaged properly with the proceedings to date and there was nothing to suggest that he would engage with adjourned proceedings. The Respondent was aware that the Applicant's witnesses were attending the hearing by virtue of Mr Williams' Skeleton Argument. There was a real public interest in the expedition of the conclusion of the matter. The allegations were serious, and dishonesty was alleged. An attempt by the Respondent to stay the proceedings by means of Judicial Review proceedings had been dismissed by the High Court as without merit. As recently as last week this Division of the Tribunal had refused the Respondent's adjournment application on the papers. Not to proceed with the hearing as listed would contradict the Tribunal's overriding objective set out in its Practice Direction on case management. The Practice Direction described the need to deal with cases efficiently and expeditiously (paragraph 2.3); to ensure that all evidential material was available before the Tribunal in a timely fashion (paragraph 2.4), in keeping with requirements for justice and fairness in the case;

- Mr Williams referred to pages 178 - 179 of "Disciplinary and Regulatory Proceedings" Seventh Edition by Brian Harris OBE QC. Those pages referred to the decision in R v Hayward [2001] QB 862 (approved by the Privy Council in Tait v Royal College of Veterinary Surgeons [2003]

UKPC 34). Rose LJ set out the proper approach to trial in the absence of the defendant and Mr Williams quoted from points 1, 2, 3, 4 and 5(i) extracted on pages 178 and 179. Point 4 made it clear that the discretion to proceed in the Respondent's absence must be exercised with great care and it was only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if, as in this case, the Respondent was unrepresented. Mr Williams observed that although the Respondent was unrepresented, he was an experienced solicitor. The extract made clear that fairness to the Prosecution had to be taken into account as well as fairness to the Respondent.

- Mr Williams submitted that the Respondent had voluntarily and deliberately failed to attend the hearing. The Applicant had taken the exceptional step of acquiring and sending him a suitable air ticket, booking suitable hotel accommodation and offering him funds. It had done all it could to enable the Respondent to participate in these proceedings. The Tribunal was entitled to take into account the fact that two attempts to enable the Respondent to participate in interlocutory hearings by Skype had come to nothing because the Respondent had not appeared on the screen at the due time. The Tribunal might conclude that the Respondent had never really engaged with the proceedings and had never had any intention of attending the substantive hearing.

7. The Tribunal retired to consider its decision on the preliminary matter.

8. Tribunal's Decision on the Applicant's Application under Rule 16(2) SDPR

8.1 Under Rule 16(2) SDPR 2007, the Tribunal had power to hear and determine an Application notwithstanding that the Respondent failed to attend in person and was not represented at the hearing. There was an obligation on the Tribunal to ensure that cases were heard with reasonable expedition so that the interests of the public as well as the profession could be protected. The Tribunal was satisfied beyond any doubt that the proceedings, and in particular Notice of the hearing date, had been served on the Respondent in accordance with the SDPR and that the Respondent was aware of the proceedings and the substantive hearing date. At the latest, the Respondent was made aware of the substantive hearing date on 11 February 2014 as it was referred to at paragraph 7 of the Tribunal's Directions Order of that date (which followed the CMH on 10 February 2014). Further, the Respondent had replied to e-mails referring to the hearing date in such a way that made it clear that he knew when it was to take place.

8.2 The Applicant had produced documentary evidence confirming that it had provided every facility to ensure that the Respondent could attend notwithstanding that he currently lives in India. The Tribunal was satisfied so that it was sure that the Respondent had received the air tickets (not least because there was a "Track and Trace" receipt confirming delivery of the letter enclosing the tickets on 10 March 2014) and that hotel accommodation had been booked for him. The Respondent had referred to the "absence of suitable travel arrangements being made" so there was no doubt that he was aware of what had been organised and at no time did he suggest that he had not received the hard copy tickets.

8.3 In his e-mail dated 4 April 2014 timed at 17:29, the Respondent stated that he was unable to be available in London "in absence of suitable travel arrangements being made". In earlier e-mails sent on the same day, the reasons given by the Respondent for the fact that he would not be in London for the substantive hearing were variously that: he did not have a ticket to travel (10:26); the ticket was "improper: needed change" (11:42); the ticket was not suitable for travel (12:37); the flight timings and economy travel were not acceptable to him, he had asked for a ticket on Air India or British Airways and he wanted a more flexible ticket so that he could return early or late if necessary for various stated reasons e.g. Sahara dust (13:22). The Respondent's assertions that the travel arrangements were in some way unsuitable were unreasonable and completely unsupported by any explanation or evidence. The Tribunal was satisfied beyond any doubt that the travel arrangements made by the Applicant were entirely reasonable and suitable. The Respondent's assertions of "unsuitability" were rejected by the Tribunal, as were his other reasons for non-attendance at the substantive hearing in London. In its Directions dated 11 February 2014, a different Division of the Tribunal made it clear that the substantive hearing would take place in London on 7 April 2014 in response to the offer to pay for the travel arrangements which was ultimately the subject of an undertaking by the Applicant. The offer was prompted by a specific suggestion included by the Respondent in his written submissions for the purpose of the CMH on 10 February 2014. The Tribunal therefore concluded that the Respondent had chosen not to be present at the hearing, as he knew when the hearing was to take place and had deliberately and voluntarily absented himself (per Rose LJ in Tait v Royal College of Veterinary Surgeons *ibid*).

8.4 The Tribunal went on to consider whether it should in any event exercise its discretion to proceed with the hearing in the absence of the Respondent, who was unrepresented. The Tribunal recognised that its discretion must be exercised with great care and that it was only in rare and exceptional cases that it should be exercised in favour of the hearing taking place (per Rose LJ in Tait *ibid*). The Tribunal had also considered the decision in Gurpinar v Solicitors Regulation Authority [2012] EWHC 192 (Admin) when exercising its discretion. The Tribunal took into account the following factors: the nature and circumstances of the Respondent's behaviour in absenting himself from the hearing; his limited and disruptive degree of engagement with the proceedings to date; the seriousness of the facts and the allegations, including allegations of dishonesty; and the public interest in the allegations being heard and determined justly, fairly, proportionately, efficiently and expeditiously in accordance with the Tribunal's Practice Direction No. 6 which was drawn to the Respondent's specific attention at paragraph 22 of the Memorandum of the CMH held on 10 February 2014 dated 17 February 2014. The Tribunal was particularly mindful of the general public interest and the particular interest of the Respondent's former clients and witnesses to events that a hearing should take place within a reasonable time of those events occurring.

8.5 In taking all of the above factors into account, and exercising its discretion with the greatest of care and attention, the Tribunal had concluded that this was a rare and exceptional case in which its discretion should be exercised in favour of the hearing taking place in the unrepresented Respondent's absence. It was difficult to identify what else could have been done by either the Applicant or the Tribunal to enable the

Respondent to participate in the proceedings in person. The hearing would therefore proceed as listed.

8.6 The Tribunal wished to take this opportunity to deal with two further preliminary matters of its own motion. The Respondent had suggested that his application made on 4 April 2014 was not *res judicata* as decided by the Tribunal because the Tribunal did not consider documents named A and B attached to his application. That suggestion was wrong; the Tribunal took the application no further. The second matter was that the Tribunal had been invited to reconsider an earlier application by the Respondent to strike out the proceedings. That application too was *res judicata* but the Tribunal gave the Respondent the opportunity to refresh his application if he appeared in person at the substantive hearing, which he had not done. That matter too had therefore been dealt with conclusively.

8.7 At 14:45 hours on 7 April 2014 the Tribunal released the SRA from its undertaking to continue to procure hotel accommodation for the Respondent given to the Tribunal on 10 February 2014. Accommodation was reserved for the Respondent as set out above, but had not been occupied for the two previous nights.

Factual Background

9. The Respondent was born on 18 March 1956 and admitted as a solicitor on 1 February 1999. His name remained on the Roll of Solicitors but he did not hold a current practising certificate. It was not believed that the Respondent was practising as a solicitor in India. The Respondent had throughout carried on practice from an address at 115A (also known as 115a) Chancery Lane, London.

10. Practising History

10.1 Between about June 2005 and October 2009 the Respondent practised as a director and member of Morgan Walker LLP. The LLP went into liquidation on 19 January 2011. Between November 2009 and 31 January 2012 the Respondent practised as the sole director of Morgan Walker Solicitors Ltd ("the Firm"). The Firm ceased to practice on 31 January 2012.

10.2 On 30 March 2012, the SRA resolved to intervene into the remnants of the Firm. On 3 April 2012 there was a similar resolution in relation to the LLP and the Respondent. The interventions served to suspend the Respondent's practising certificate. The Respondent became bankrupt in August 2012 and he remained undischarged.

11. Rule 5 Statement - The Case of Company V ("V")

11.1 On 3 June 2011, Shane Maloney, the Sole Director of V, wrote a letter of complaint concerning Mr AK and the Respondent to the SRA. Mr Maloney described himself as a "Chartered Accountant of 25 years standing and a senior principal in a reputable and high-profile West End firm".

11.2 At all material times Mr AK and the Respondent acted for client company R ("R"), which acquired the assets and goodwill of two media facilities companies on 21 December 2009. The acquisition was routed via V of which Mr Maloney was Sole

Director. V instructed solicitors Hamlins LLP ("Hamlins") to act on its behalf. The transaction was effected by an Asset Purchase Agreement ("the APA") dated 21 December 2009 made between R and V.

11.3 On 18 December 2009, the Respondent wrote on behalf of the Firm to Gordon Oliver of Hamlins who acted for V. The letter was signed by the Respondent. It was headed "Undertaking" and referred to the transaction, stating as follows:

> "Capitalised terms in this undertaking have the meaning as set out in the Agreed APA unless otherwise defined herein.
>
> We undertake to hold upon Completion the Retained Consideration in the sum of £150,000 in our bank account and disburse these sums in the following manner:
>
> 1. If there are no Claims in the first six months after Completion, then in accordance with clause 3.2 of the Agreed APA the sum of £75,000 shall be paid to the Seller or their solicitor after the end of the sixth month period from the Completion Date.
>
> 2. If there are no Claims in the following six months period thereafter, then in accordance with clause 3.2 of the Agreed APA the remainder sum of £75,000 shall be paid by the Buyer to the Seller or their solicitor after the end of the twelve month period from the Completion Date.
>
> 3. If any Claim arises during the period of 12 months after Completion, no sums shall be paid to either of the Buyer or the Seller out of the Retained Consideration or part thereof as applicable, until a Claim made by the Buyer under this Agreement has been adjudicated or settled in accordance with the dispute resolution provisions contained in this Agreement."

11.4 It was not a term of the undertaking that the Retained Consideration must be held by the Respondent in a client account, but merely that it must be held by the Respondent.

11.5 The terms of the undertaking were repeated at clause 3.2 of the APA. The dispute resolution provisions were set out at clause 28.

11.6. The term "Claim" was defined in the APA at clause 7. In particular at clause 7.2:

> "The Seller shall not be liable for a claim unless:
>
> (a) the amount of the Claim, or a series of connected Claims of which that Claim is one, exceeds £10,000; and
>
> (b) the amount of all Claims that are not excluded under clause 7.2(a) when taken together exceeds £50,000, in which event the whole amount of the Claim, or series of connected Claims, is recoverable (and not just the amount by which the limits are exceeded) subject to the maximum set out

in clause 7.1 and any other exclusions and limitations available to the Seller under this Agreement; and

(c) the Claim is admitted by the Seller, or the Claim has been adjudicated in accordance with the dispute resolution provisions contained in this Agreement."

11.7. The Firm complied with clause 1 of the Undertaking when the Respondent released £75,000 to Hamlins on the due date of 21 June 2010, by means of an instruction to HSBC signed by Mr AK and Mr AN.

11.8 On 17 September 2010, Hamlins wrote to the Firm confirming that V had agreed to pay R the sum of £12,000 towards dilapidations. Hamlins gave the Firm authority to release £12,000 from the "Retained Consideration" of £75,000 being held, treating the undertaking as being varied accordingly. The letter was endorsed with the Respondent's signature for and on behalf of the Firm below the words:

> "(Typed) We, Morgan Walker hereby reconfirm the undertaking dated 18 December 2009 as varied by this letter. (Manuscript) Now our undertaking is limited to the sum of Sixty three thousand pounds only (£63,000.00/-)"

V also authorised the variation and release of £12,000 to the Firm by letter dated 15 September 2010, which was endorsed and signed by the Respondent as set out above.

11.9 The Respondent/the Firm did not release the sum of £63,000 remaining under the undertaking to Hamlins on the due date of 21 December 2010.

11.10 On 24 May 2011 R sent an e-mail to Hamlins, on the subject of "Retentions held by Morgan Walker Solicitors under Undertaking to Hamlins LLP dated 18 December 2009 varied on 15 September 2010" (copied to the Respondent and others) confirming the following:

- No claim against R was foreseen;
- The Firm had been informed that there was no claim;
- The Firm had been instructed to release the funds held under the terms of the undertaking to V; and
- The Firm had not confirmed that payment had been made.

V confirmed that position during a telephone conversation between a Mr T and the SRA on 11 August 2011.

11.11 On 16 June 2011 Hamlins formally demanded from the Firm immediate payment of £63,000 into Hamlins' client account by letter marked for the attention of the Respondent. The letter observed that legal proceedings had been commenced against R for recovery of the sum. The Respondent was asked to confirm by return that he still held the £63,000 in client account representing the retained consideration under

the APA (the Tribunal noted that the Respondent had not undertaken to hold the funds in client account). R responded to a similar demand from Hamlins by letter dated 22 June 2011, stating in particular the following:

- Hamlins had sought an independent undertaking from the Firm on 18 December 2009;
- The undertaking was varied as between the Firm and Hamlins on 17 September 2010 by virtue of an agreement between V and the Firm;
- R was not a party to the undertaking or the agreement between V and the Firm;
- R had confirmed that there was no outstanding claim which was the condition precedent to the release of the retained funds. R had no role to play once it had confirmed that there was no claim and that had been confirmed by R without any delay;
- Paragraph 3 of the undertaking made it clear that the payment to the Firm was irrevocable and R was not contemplated to have any control on the sum; and
- Hamlins should pursue the Firm under the undertaking.

11.12 V reported the non-release of the funds to the SRA on 3 June 2011, expressing "great concern" about the whereabouts of the money.

11.13 By e-mail dated 29 June 2011 to Hamlins, R confirmed that it did not foresee a claim against the company and that it had authorised the release of £63,000 by the Firm to Hamlins in accordance with the undertaking. Hamlins wrote to the Respondent by e-mail on 29 June 2011 referring to the formal demand dated 16 June 2011, and stating, amongst other things, that:

- The Respondent had ignored the request on 16 June 2011 for confirmation that he still held the sum of £63,000;
- The Respondent had stated that he no longer acted for R;
- The Respondent had asserted the existence of relevant claims under the APA of which V was aware and that nothing was payable until such time as adjudication was over notwithstanding the statements of R to contrary effect;
- Any existing claim had been resolved by R confirming to V that they had no claim against V and the dispute resolution provisions of the APA had therefore been complied with; and

- An immediate (and further) demand was made for payment of £63,000 as there was no basis upon which the Firm was validly continuing to retain any part of the retention;

- The Respondent was told that he must immediately inform Hamlins if he was no longer in possession of the funds because the undertaking required the funds to be held at the Firm until paid out in accordance with the undertaking.

11.14 The Respondent replied by e-mail dated 29 June 2011, stating as follows:

> "Dear Hamlin's (sic)
>
> Please try to respond to our nonsense (as you describe our request after reading the old correspondence) and after seeking further advice or instructions which you may require.
>
> You are aware that there is valid and subsisting dispute (sic). Your contentions in the email are disputed as informed earlier and facts as you present are not accurate. You cannot also recover the same amount twice.
>
> In light of our these (sic) observations and previous e-mails we do not see any further need to correspond until appropriate answers supported by documentary evidence are available."

11.15 On 24 June 2011, the SRA wrote to the Respondent to put the matter to him formally. He replied on 4 August 2011 as follows:

- The assertion "of there being no liability or possibility of the nil liability" was false;

- There was "every probability of further claims within six years";

- The undertaking was conditional;

- The trigger for payment did not "occur within December 2010"; and

- The undertaking had expired in December 2010;

- "We consider our Undertaking is discharged and that there is no obligation to meet any payment liability in connection with the Undertaking and in any event payments are not due as there are existing and/or subsisting claims which will be evident from the pleadings or the Judgement (sic) of the Employment Tribunal. New claims cannot be ruled out as well."

11.16 On 18 August 2011, V sent a formal letter before action to the Respondent. High Court proceedings were duly commenced against him and the Firm. The Respondent wrote to the SRA on 7 September 2011. He denied a breach of Rule 10.05. The Respondent suggested that as the issues were being litigated, the SRA should await the findings of the Court on the expiry of the undertaking as well as any liability for

payment. He further suggested that the undertaking was conditional, that payment was not due for at least another 4 years, and that the undertaking had expired. He referred again to the existence of relevant claims. He said that he could not provide the ledger for R because there was no ledger. He suggested that the Firm acted for the R Group, and that the funds which came to the Firm belonged neither to V nor R. The Respondent said that the funds "have been applied/refunded as per direction/standing instructions of the parent group which remitted the money".

11.17 On 15 February 2012 there was a hearing before Master Fontaine at which all parties, including the Respondent and the Firm (Defendants in these proceedings), were represented by Counsel. Master Fontaine ordered summary judgment against the Firm for £63,000 together with interest of £5,799.45 payable in 14 days. That Order included an entitlement for the Claimant to summary enforcement against the Respondent of the undertaking given by him. The Respondent and the Firm were ordered to pay the Claimant's indemnity costs and to pay £20,000 on account of costs, which were subject to detailed assessment if not agreed, within 14 days.

11.18 The Respondent did not comply with the Order of Master Fontaine which he sought to appeal. Execution of the Order was stayed by Globe J on 14 March 2012 pending determination of the appeal or further order. On 29 March 2012 the matter went before Foskett J on V's application to discharge the stay of execution. On 19 April 2012 the Respondent and the Firm were ordered by Collins J to pay £20,000 into Court within 7 days if the stay of execution was not to be lifted. On 12 July 2012 the matter came before Mackay J. Counsel for V appeared, but there was no appearance by or on behalf of the Respondent/the Firm. The application for permission to appeal was dismissed and the Respondent and the Firm were ordered to pay V's costs on an indemnity basis. The Respondent made a further application, this time for an extension of time and permission to appeal Master Fontaine's order entitling V to summary enforcement of the undertaking against him. This application resulted in the case being referred to Lord Justice Richards on 28 January 2013 for directions on whether the Court of Appeal had jurisdiction to entertain the application. Lord Justice Richards was satisfied that the Court of Appeal did not have jurisdiction. The Respondent had pursued the correct route in applying to the High Court for permission to appeal against the Master's Order. That application was dismissed by Mackay J and no appeal lay to the Court of Appeal against that substantive decision. The case came back before Lord Justice Richards on 26 April 2013 for reconsideration in the light of further representations from the parties. Richards LJ maintained his view that no appeal lay to the Court of Appeal against the Master's Order and his previous decision stood. The Order of Master Fontaine therefore remained undisturbed.

11.19 V attempted to enforce summary judgment and obtained an Order dated 8 March 2012 requiring the Respondent to attend court for questioning concerning his means returnable at the Royal Courts of Justice on 20 April 2012. V also issued Statutory Demands. V's solicitors wrote to solicitors acting for the SRA on 9 August 2012. The letter confirmed that the relevant documents in respect of questioning were personally served on the Respondent on 9 March 2012 and that he failed to attend Court for questioning on the due date. The Statutory Demands were served on the Respondent on 9 March 2012 and no response had been received. The letter recorded that the Respondent wrote to the solicitors on 25 April 2012 informing them that he had left

the country and had no assets in the UK or India, and that the Firm had been intervened/closed and was awaiting winding-up. The solicitors contacted the Respondent's professional indemnity insurers via their solicitors on 30 April 2012, and the latter confirmed that the Judgment was not covered by the Respondent's professional indemnity insurance policy.

11.20 On 23 April 2012 Capita Insurance Services, Manager of the SRA Assigned Risks Pool ("ARP") and the Respondent's insurers, informed the SRA that the ARP had declined to indemnify the Respondent and the Firm with respect to V's claim. Capita stated that, during the course of the ARP's investigation, the Respondent had stated that he had applied the monies in question in payment of his outstanding fees. He claimed to have done so on instructions from R but had not provided documentary evidence of those alleged instructions.

11.21 The SRA commenced an investigation at the Firm on 23 February 2012. The following points arose:

- The Respondent had been in India since the end of January 2012. Staff had not been told when he would return;
- The Respondent stated during the investigation that all accounting records were with his accountants in India;
- Client R's file had been returned to the client; and
- The Firm (as distinct from the LLP) did not operate a client account.

12. Rule 7 Supplementary Statement - The Case of Mr G

12.1 The Respondent acted for Mr G in ancillary relief proceedings. Mrs G was represented by MR Solicitors ("MR").

12.2 Lord Justice Hughes sitting in the Court of Appeal set out certain facts in his Judgment in interlocutory proceedings dated 13 August 2010, as follows:

- The husband and wife were 81 and 63 years of age respectively and had had a lengthy marriage. They were of Indian origin but had been in England all their married lives;
- The assets at stake in the ancillary relief proceedings were subject to a number of areas of dispute;
- Deposits to the value of £3m to £3.5m were held in Mr G's name at USB (a bank) in Switzerland;
- Mr G contended that the funds in the Swiss bank account (amongst others) were held by him on behalf of his extended family, under an arrangement known as a Hindu Undivided Family ("HUF"), a form of trust;
- The ancillary relief application was well advanced; and

- Mr G had gone back to India, where there was Indian litigation with respect to the HUF.

12.3 On 16 February 2011, Mr G wrote to Mrs G's Solicitors MR confirming that he and Mrs G had come to terms. Mr G was to pay Mrs G £3.19 million in full and final settlement of her claims, and each party was to pay their own legal costs. Mr G said that he would arrange the necessary funds "hopefully within 4 weeks". He requested MR to take steps to unfreeze his bank accounts to enable the settlement to be effected.

12.4 On 25 February 2011 (incorrectly typed as 25 November 2011 in the Rule 7 Supplementary Statement, paragraph 8, and amended at the hearing with the consent of the Tribunal), SC (a firm of Indian Advocates) wrote to the Firm on behalf of Mr G's family member RNG who was a party to the Indian litigation, and who was named in the heading of the letter, as was Mr G. SC informed the Firm as follows:

> "We have been instructed by our clients abovenamed (sic) to state that our client would be remitting the sum of USD 3.5 Million to be held to our order. The objective is to have the aforesaid money readily available should a settlement is (sic) achieved between the parties in the aforesaid matter. With specific instruction from our client abovenamed (sic) we say that you will seek prior approval of the settlement terms before you can make any payment towards the said settlement."

12.5 By letter dated 28 March 2011, Mr G instructed UBS in Switzerland to transfer $3.5 million to the Firm's account. On 5 April 2011 the funds were received into the Firm's account with the Bank of Baroda, London ("BB") under a narrative referring to Mr G.

12.6 On 6 May 2011, RNG wrote to SC to the effect that he approved the terms of settlement between Mr and Mrs G. Once approved by the Courts in England and Wales, RNG would withdraw his claims in the Indian litigation and he understood that Mrs G would do likewise. SC sent a copy of that letter to an office maintained by the Respondent in Calcutta. On 21 June 2011, the Respondent informed MR of the death of RNG the previous week and asked for a progress report in relation to his last draft Consent Order.

12.7 On 4 August 2011, MR issued an application to the Court on behalf of Mrs G, seeking to resolve the ancillary relief proceedings, as follows:

- An Order was sought in the terms of a draft order annexed to the Application;

- Mr G acknowledged that he intended to meet the lump sum of £3.19 million provided for by paragraph 3 of the draft order from funds which he believed to be free from any entitlement by any other person(s) under the HUF principles;

- The Decree Nisi was to be made absolute contemporaneously with receipt by Mrs G of the lump sum of £3.19 million;

- Mr G was to pay Mrs G a lump sum of £3.19 million on a date to be inserted in the Order.

12.8 The hearing of the application was listed to take place on 12 August 2011. The Respondent made an application to adjourn that hearing, which was heard by Moylan J on 12 August 2011, and adjourned until 7 September 2011. Further to Moylan J's directions, the Respondent filed a witness statement dated 25 August 2011. He confirmed that he had conduct of the matter on behalf of Mr G. The Respondent requested an adjournment of the trial fixed for 8 days starting on 31 October 2011 and release of funds from the State Bank of India ("SBI"), London to meet past and future legal costs. He also requested release of funds from SBI to make a payment to the Inland Revenue. The Respondent said that Mr G was without funds to meet the costs of the litigation and appeared to seek the release of £250,000 immediately to continue to meet his costs.

12.9 On 4 September 2011, the Respondent sent an e-mail to Mr G's relative Mr VT, stating:

> "I have USD 3.5 million (from HUF & RNG) to settle the matter that does not fetch enough interest to meet the litigation costs, but I will use that money if everything fails to meet our costs. It is not in our client account but fixed deposit for three months and rotating every time it matures … Please ensure that this e-mail is brought to the knowledge of [Mr G] appropriately. I am planning to be in Calcutta on 9th Sept."

12.10 On 6 September 2011, Mr G wrote direct to Mrs G's solicitors MR seeking only "minor changes" to the draft Consent Order.

12.11 On 7 and 9 September 2011, the proceedings between Mr and Mrs G were to be heard by His Honour Judge Holman. On 6 September 2011 the Respondent wrote to the Court stating:

> "We have been asked by our client that he would attend the Court in person and conduct his case himself (sic). In view of this recent development please keep this letter on record and kindly bring the same to the notice of the (sic) Mr. Justice Holman as the matter is listed for hearing tomorrow at 10:30am. We regret the inconvenience caused to the Court by not being able to assist at the hearing tomorrow. However, given the specific instructions from the client and we cannot continue in conduct of the matter (sic)."

12.12 During the hearing, Holman J wanted information in relation to the monies that the Respondent/the Firm was holding for Mr G. In accordance with the Judge's request Mr VT, who was at the hearing to assist Mr G, sent an e-mail to the Respondent on Friday, 9 September 2011 timed at 12:16, which stated as follows:

> "Mr Justice Holman is at the moment hearing the case of [G], in which Mr Ashok Sancheti has until a few days ago acted for [Mr G]. The judge needs to have an immediate confirmation as to the amount of the funds held by your firm for [Mr G] and to have information as to the accessibility of those funds and confirmation that they can be remitted within a few days to the solicitors

> who act for [Mrs G] in part satisfaction of a settlement that has been reached. Please respond immediately and copy your response to James Turner QC, who is the barrister for [Mrs G]. His e-mail address is […]. If this information is not provided the judge has indicated that he may very well make an order requiring the attendance at court of someone from your firm."

12.13 The Respondent replied by email timed at 14:05 hours as follows:

> "let the solicitors for the claimant or Mr Turner write to us."

Mr Turner duly wrote to the Respondent on the same day, confirming the contents of the e-mail from Mr VT and that Mr Justice Holman required the information urgently. Mr Turner copied the message to the Judge's clerk.

12.14 Later on 9 September 2011, the Judge made an Order which recorded that Mr G acknowledged that he intended to meet the lump sum provided for from funds which he believed to be free from any entitlement by any other person(s) under the HUF principles. The Order continued as follows:

> "H. **AND UPON** [Mr Justice Holman] reading a Debit Advice produced by UBS SA dated 6 April 2011 which evidences the transfer from the account of the first respondent [Mr G] with UBS in Lugano of USD 3,500,000 into the client account of the first respondent with Morgan Walker Solicitors with Bank of Baroda, London; and reading an e-mail from Ashok Sancheti, Director and Head of Practice of Morgan Walker Solicitors, to [Mr VT] and others dated 4 September 2011 which clearly evidences that Morgan Walker continue to hold the said sum "to settle the matter":…"

12.15 The Order provided for Mr G by 4pm on 30 September 2011 to pay or cause to be paid to Mrs G a lump sum of £3,190,000 to her solicitor as her agent, but held to the order of the Court. The Order further provided for Morgan Walker Solicitors to pay to Mrs G's solicitors by 4pm on 30 September 2011 the said sum of $3,500,000 (or its sterling equivalent). The Order recorded that Mr G expressly required and instructed Morgan Walker Solicitors to make that payment by that date even if a penalty or loss of interest was incurred by early withdrawal from the account in which the funds were deposited. Payment would result in the discharge of the freezing order against Mr G's account and Mrs G's claims being dismissed.

12.16 On 12 September 2011, MR wrote to the Respondent. They informed him that, as the Respondent was aware, the hearing had taken place before Mr Justice Holman. The letter incorrectly referred to the dates of the hearing as being 7 and 9 October 2011 rather than September. MR referred to the e-mail sent by Mr VT to the Respondent seeking information in relation to monies held by his firm on behalf of Mr G, and the Respondent's reply. The letter mentioned that the information sought by the Judge was not supplied to Mr VT. Reference was made to the e-mail sent to the Respondent by James Turner QC and a further e-mail sent by MR, again to the Respondent, seeking the same information. No further communication was received from the Respondent or the Firm (the e-mail from Mr Turner having been copied to the Firm's general e-mail address) by 6:15pm on that day when the Judge concluded his delivery of a final judgment and made a substantive order in satisfaction of Mrs G's financial

claims. MR referred to an e-mail sent by the Respondent to Mr Turner QC dated Monday, 12 September 2011, timed at 9:18 (stated to be "English time"). The first paragraph of the e-mail indicated that the Respondent had not responded further on Friday [9 September] because he had been flying from Bombay to Calcutta. The Respondent had just read the e-mails from Mr Turner and MR, and expressed surprise that, if the information required was "so urgent", why it had not been sought sooner. MR explained that it was the Judge who asked for the information on 9 September, in the light of certain other information that he was given. MR expressed their surprise that the Respondent considered the matter to be "very complicated" and noted that the Respondent did not explain what was complicated or why the information sought from him could not have been readily provided by him or his office. MR noted that the Respondent stated in the final paragraph of his e-mail of 12 September 2011 that he did not hold any funds on behalf of his "former client" Mr G, and observed that in the light of information supplied to the court by Mr G, that did not seem to explain the full picture. This letter was sent to the Respondent by hand and by e-mail and in both cases a copy of the final draft of Mr Justice Holman's Order of 9 September 2011, which was said to have been sealed by the court, was enclosed. MR concluded the letter by drawing the Respondent's attention to Recital H (see paragraph 12.14 above) and requesting confirmation by return that payment would be made in accordance with the terms of the Order.

12.17 On 13 September 2011, Mr G wrote to the Respondent enclosing the sealed Order of Holman J, and instructing him to transfer the $3,500,000 to MR's client account. The Respondent did not comply with Mr G's instructions, which the latter repeated on 22 September 2011, stating that he would have "no option but to take the necessary actions" in the absence of a reply by the following Monday afternoon.

12.18 On 12 September 2011, the Respondent wrote to BB with reference to a numbered account in which the funds in question were held on three-month fixed deposit. The Respondent instructed BB to convert the funds, $3,510,528.19 including interest, into Indian Rupees at the best available rate, and to issue a bank draft in the name of RBI, Calcutta for the entirety of the said sum immediately. The Respondent requested that all charges be minimised. The letter was date stamped "MAIL RECEIVED 12 SEP 2011, BANK OF BARODA, LONDON". On 27 September 2011 BB wrote to the Respondent referring to his fax containing his instructions of 12 September 2011 in relation to the conversion of the money and confirming that his instructions had been complied with. In particular, the bank draft was issued dated 12 September 2011 and made payable to the Reserve Bank of India, Calcutta drawn on the Bank of Baroda.

12.19 Mr G issued civil proceedings against the Firm under its various trading names. He pleaded in his Particulars of Claim that the Respondent/the Firm prevented Mr G from complying with Holman J's Consent Order as a result of the conversion of the funds to Rupees and the putting of the monies beyond Mr G's control. The Respondent signed a Statement of Truth verifying the Firm's Defence and Counterclaim dated 2 November 2011, the relevant points of which were as follows:

- The Respondent's retainer by Mr G was terminated on 6 September 2011;
- Upon the death of RNG and enquiry of SC, the latter were in no position to give further instructions in relation to the funds;

- The Respondent had come to "a concluded view" that the sums in question were "most likely" funds taken out of India in violation of the stringent foreign-exchange laws and tax laws of that jurisdiction. Accordingly the Respondent transferred the said sum to the RBI by way of a bank draft;

- The only written instructions given to the Respondent were that the sum of US$3.5 million was to be held to the order of RNG through his solicitors;

- The Respondent/the Firm did not operate a client account but he had fully complied with the Solicitors' Accounts Rules;

- The Respondent had seen the Order of Holman J on 13 September 2011. He was not present at the proceedings on 7 or 9 September 2011 and had no notice that such an order had been made. He said that "it was specifically informed on 9 September 2011 that such an order could not be made without disclosure of details requested [from the Respondent]" and that he was told that an order requiring his attendance at the hearing would be made in the absence of the urgent provision of the information. The Respondent said that despite specific enquiries on the evening of 7 September and morning of 12 September no further communication was received by him between 9 and 12 September and/or during ordinary working hours on 12 September 2011;

- The Respondent/the Firm denied that they could be in breach of their retainer once the retainer had been terminated. They also denied that any fiduciary duties were owed to Mr G after termination of the retainer;

- The Respondent/the Firm was unable to pay monies no longer in its control or possession. The Respondent/the Firm held no such sums on behalf of Mr G. Mr G had full recourse to apply to the RBI and/or the Indian Courts. The Respondent/the Firm had expressly disclaimed any interest in the funds.

12.20 On 3 October 2011, the Respondent swore an affidavit in the same litigation, the relevant points of which were as follows:

- The funds in question came from RNG to be held to the order of his lawyers in Calcutta;

- The Respondent had no idea how RNG had remitted the funds to him/his Firm;

- "In the uncertainty and pressure under which we were being put into (sic) we transferred the entire funds to [RBI]. The rightful claimant to the money may simply attend the [RBI], produce the appropriate documents as to their rights to such money and explain under what circumstances and/or reasons such remittance of such money out of India whenever it took place and claim it (sic); and

- "Accordingly on 12 September 2011 I gave instructions to the [BB] to issue a bank draft for the entire sums (sic) of 3.5 USD million lying in our account together with interest earned if any and make it payable to [RBI]. They issued the bankers draft payable to [RBI] which I can confirm has been lodged with the [RBI]. There is no account holder or account number where such money is held or is to be held."

12.21 In a Witness Statement bearing a Statement of Truth dated 11 October 2011 in the same proceedings, the Respondent confirmed giving instructions to BB to convert the money into Indian Rupees and to issue a bank draft to RBI, Calcutta. The Respondent stated that he "had the bank draft collected within the course of the morning itself [12 September 2011]. The Respondent said that once he had obtained the bank draft he gave it to "an associate of mine", an accountant by the name of Mr S (the Respondent gave Mr S's surname in his Statement but it is redacted for the purposes of this Judgment) who was travelling by the evening flight to Calcutta and instructed him to physically deposit the draft with RBI, Calcutta. The Respondent believed from Mr S that Mr S executed his instructions soon after he returned to Calcutta. Mr S was visiting the Respondent in connection with another client, and whilst the Respondent contemplated sending the bank draft by courier, Mr S offered to take it with him and to lodge it with the RBI. The Respondent trusted Mr S and thought this was safer than using a courier. The Respondent stated that "In consequence neither I nor [the Firm] have or has any control or power over the draft". The fixed deposit account was debited with the sum of money and the Respondent said that BB was not able to withdraw or dishonour the draft. Mr S had submitted the draft to the RBI and obtained a "token" as confirmation of the submission of the draft. The Respondent said that "we are taking steps to obtain this and as soon as we have done so we will supply [Mr G's solicitors] with a copy". The Respondent explained why he had proceeded as he had. He believed and continued to believe that the money properly belonged to RNG and the HUF. Rather than involve himself further in what he described as "family squabbles" and be brought into a situation where various parties sought to give conflicting instructions in relation to the funds, whether for the discharge of Mr G's obligations to Mrs G or any family members making claims in relation to those funds, he decided to pay the entire sum to the RBI. His intention in doing so was to allow any family member, virtually all of whom were based in Calcutta including Mr G, to demonstrate their proper entitlement to the money and recover it from the RBI, which he said they were able to do. If Mr G was indeed the true beneficial owner of the money, all he had to do was to establish a claim with the RBI which would then pay him the money. The Respondent repeated that he had no power or control over the money formally in the Firm's deposit account. There was nothing that he or the Firm could do to restore the position once the draft had been issued and lodged.

12.22 In a letter dated 27 January 2012 to Mr G's solicitors, the Respondent stated that he had no contact details for Mr S and "would not be able to provide them absent his consent even if we did."

12.23 On 22 February 2012, His Honour Judge Seymour QC gave Judgment in Mr G's civil proceedings. The Judgment set out the history of the litigation as follows:

- On 9 September 2011 Holman J ordered the Firm to pay US$3.5 million to Mrs G's solicitors on or before 4pm on 30 September 2011;

- On 11 October 2011 the proceedings were heard by Lloyd Jones J, when the Firm was represented by Leading Counsel. It was ordered that the Firm was to communicate with Mr S requiring him to deliver up the token with respect to the converted draft and also to communicate with RBI requiring it not to present the draft but to return it to MW which was then to require BB to cancel the draft;

- On 8 December 2011 the case came before Wyn Williams J. The Firm was ordered not to deal with the draft save as provided by the Order. The Firm was to send the draft to BB for cancellation and retention pending the establishment of a joint account to accommodate the funds. The Firm was to provide proof of dispatch of the draft to BB; and

- On 14 December 2011 the matter came before His Honour Judge Seymour QC. The Firm had not complied with the Order of Wyn Williams J. The Respondent was ordered to instruct BB to cancel the draft and to hold the funds in the Firm's account. The Respondent was ordered to swear an affidavit in relation to all matters arising since 12 September 2011.

12.24 Other relevant points arising from the Judgment were as follows:

- A document stamped by RBI on 29 September 2011 evidenced an attempt to deposit 164,819,300 Rupees in the form of a draft drawn on BB in London with RBI by way of advanced income tax payable by Morgan Walker Solicitors, Calcutta for the Assessment Year 2012-2013. The signature of the person making payment was recorded in manuscript as that of Mr S. RBI did not present the draft to the tax authorities by virtue of the existence of the Order of Lloyd Jones J dated 11 October 2011. The draft was returned;

- Seymour HHJ recorded that the Respondent had not made any application as far as he was aware to vary his Order of 14 December 2011. The Judge suggested that it was surprising to find that a person who was apparently a solicitor of the Senior Courts sought to assert that he was relieved from complying with an Order of the Court on the ground that compliance was disproportionate. The Judge noted that this showed a lack of respect to the Court which in his judgement plainly amounted to a contempt. The Respondent was found to have been in contempt of Court by virtue of his failure to comply with the Order dated 14 December 2011. The Judge noted that the Respondent had, by his conduct, demonstrated an inclination to play "fast and loose with this court". His Honour Judge Seymour QC issued an Order endorsed with a Penal Notice addressed to the Respondent requiring him to attend court on 2 March 2012 for the purpose of cross-examination by those acting for Mr G.

12.25 In civil litigation issued by The Law Society against the Respondent and others in respect of non-compliance with a Section 44(B) Notice served on the Respondent, he

made a Witness Statement on 22 March 2012, in which he offered to remove his name from the Roll of Solicitors.

13. Rule 7 Supplementary Statement - The Case of H

13.1 In 2010, H instructed the Firm to act on its behalf in relation to a dispute with OA. In December 2010 the dispute was settled, and H was to pay OA £4,284.63. H paid this sum to the Firm's account. The Firm did not pay the settlement funds to OA. Judgment was entered against H which bailiffs attempted to enforce. H immediately paid £4,864.64 (inclusive of costs) to settle the matter, effectively paying more than twice the agreed settlement amount. H complained to the SRA on 5 October 2011. It was confirmed that the settlement funds had been paid to the same account which at a later date received a costs payment from H to the Respondent/the Firm.

13.2 The SRA wrote to the Firm on 15 December 2011 and 11 January 2012. The Respondent replied by e-mail on 30 January 2012, as follows:

> "I understand that this matter relates to our firm. The dealing solicitor was [Mr VA] and paralegal working under him was [RR]. Kindly make enquiries of them if they can throw any light (sic). It is not understood after enquiry as to which sums have not been accounted for. I think that if they wish an invoice for the paid sums then we can send or issue another invoice for our work. In any event the matter being of past and the firm under closure we can do very little in these circumstances."

The SRA pressed for a substantive response. The Respondent sent a further e-mail on 31 January 2012 in which he said that he would not be able to respond until mid-March. He suggested that he did not have time to respond and nothing further was heard from him.

14. Rule 7 Supplementary Statement - The Case of AHL

14.1 AHL instructed the Respondent/the Firm to act on its behalf on the purchase of two flats. On about 26 November 2010 a Completion Statement was sent by the Firm to AHL. The purchase price was £2,701,607.29. Stamp Duty was calculated at £135,080. The total amount required from AHL to complete was £2,847,887.30.

14.2 On 4 January 2011, AHL paid into the Firm's bank account the sum of $4,439,960.01. This was the $ equivalent of £2,847,887.30, and included Stamp Duty. Completion of the purchase was on 24 January 2011. Stamp Duty had to be paid within 30 days of completion, namely by 23 February 2011. It was not paid by the Firm within that time or at all. AHL instructed LG to act on its behalf to recover the funds it had paid to the Firm for Stamp Duty. LG wrote to the Respondent on 14 December 2011. The Respondent had previously informed LG that Morgan Walker LLP was in liquidation as at 8 December 2011. LG complained to the SRA on 22 December 2011. AHL and/or LG did not receive from the Respondent the return of any of the files relating to the matter.

Witnesses

15. Rule 5 Statement - The Case of Company V

Gary Page

15.1 Mr Page gave evidence on oath. He confirmed his full name and his employment as a Forensic Investigator with the SRA. He confirmed that the contents of his witness statement endorsed with a Statement of Truth signed by him and dated 15 January 2014 were true. He agreed with the contents of the Rule 5 Statement insofar as they related to his involvement.

15.2 Mr Page was referred to the document headed "**TIME REPORT**" exhibited to the Rule 5 Statement, which recorded his activities in relation to the Respondent and was a running log of events as they occurred during the investigation. Its purpose was to provide an update for the SRA's Supervision Department amongst others. For example, the decision by the SRA to intervene took account of this document. The Time Report confirmed that on 23 February 2012 Mr Page attended the Firm's Chancery Lane offices with Ms Bartlett (an SRA Supervisor) where they met with Ms T, a paralegal who seemed to be in charge. Mr Page was satisfied that the Respondent was not at the Firm's office on that day: he was said to be in India. Ms T provided the following information:

- The Respondent was last at the Firm towards the end of January 2012 and Ms T had not been told when the Respondent would return;
- Client matter files were kept in the upstairs office and were dealt with by the Respondent;
- Post was opened by the receptionist and scanned to the Respondent for his attention. Clients dealt directly with the Respondent by e-mail (his e-mail address was on the website). When people called the Firm they were told that the Respondent was travelling. The Respondent was not contactable by mobile telephone and responded best by e-mail;
- Ms T had been to court to file applications on the Respondent's behalf and to take notes during hearings which appeared to be in relation to court cases involving the Respondent, the last occasion being in January 2012;
- The Respondent had explained to Ms T that the Firm was due to be closed but she would "gain experience of non-reserved work".

15.3 Mr Page visited the Firm on 2 March 2012 with Ms Maskell (an SRA Investigator). He took a Section 44B Notice requiring production of specific files with him for service. They were greeted by the same receptionist as on the previous occasion. She said that the Respondent was not present. They met with Ms T, and Mr Page gave her the Section 44B Notice. Ms T asked if she could e-mail the document to the Respondent and Mr Page agreed. When Ms T returned she said that she had scanned the document to the Respondent and that she would attempt to contact him by telephone in order to make him aware of the document. At 12:58pm Ms T stated that

the Respondent was on the telephone. Mr Page spoke to the Respondent by way of a conference call microphone. The Respondent asked who was present from the SRA and Mr Page gave his own and Ms Maskell's name. Mr Page explained that he had served a Section 44B Notice on Ms T which requested immediate production of specific files. He understood from Ms T that the document had been scanned and sent to the Respondent. The Respondent replied that the Firm was not a regulated practice. Mr Page stated that the file production request related to files that the Respondent had conduct of in his previous practices. The Respondent said that all files had been returned to the clients and no further files were held. The Notice should be left and e-mailed to him. Mr Page reminded the Respondent that that had been done by Ms T and by the SRA. The Respondent stated that he would respond in writing "by Tuesday" as to the whereabouts of the files. Mr Page asked the Respondent if he had seen the Notice served on him that day. The Respondent said that he had not been able to open the attachment so he had not read it and it was 7pm in India. Mr Page asked the Respondent why he had not responded to a previous letter and Section 44B Notice left at the Firm and sent by e-mail. The Respondent stated that he had been busy. The call was ended by the Respondent at 1:03pm.

15.4 An application was to be made by the SRA to the High Court for an enforcement order with a power of entry and search. This Order was made by Warren J on 12 March 2012. The Order could be paraphrased as granting the SRA authority to enter the premises to exercise its statutory powers regardless of whether or not the Respondent cooperated.

15.5 By fax on 7 March 2012, the Respondent replied to service of the further Section 44B Notice denying that he had the files listed.

15.6 On 16 March 2012 at 12:10pm, Mr Page attended the Respondent's offices, primarily to execute the enforcement order, with Ms Maskell and Mr Dunn of Devonshires. Execution was dealt with properly, and in particular Mr Dunn did not "barge in" as alleged by the Respondent during the course of these proceedings. They were refused entry to the premises by the receptionist, who stated via the speaker phone that she was under instruction not to grant entry to anyone without an appointment and that the Respondent was not in attendance. They explained who they were and that they were in possession of a High Court Order with a power of entry. Again they were refused access. Mr Dunn served the Court Order and associated papers by posting through the letterbox. Arrangements were made to force entry with police assistance. At 12:37pm the Firm's door was opened by the Respondent who stated that he had been reading the papers served by Mr Dunn. They were invited into the offices. At 12:45pm they commenced an interview with the Respondent, who stated the following:

- All accounting records were with his accountants in India;
- The only file listed in the previously served Section 44B Notice which he had was the Mr G file which was the subject of ongoing litigation. The Respondent had all of Mr G's files;
- Client R's file had been returned to the client;
- The Respondent did not have a file in respect of H's dispute with OA;

- The files relating to client AHL were all returned to the clients in India via Mr W who worked for the S group. The files were sent to a hotel in Bombay. Mr W had told the Respondent that the files had not been received by him. The Respondent had requested a copy of the files from the vendors' solicitors. The client then instructed another firm of solicitors;

- The Respondent would provide evidence as to the return of the files in relation to the R and AHL matters;

- The Respondent could not recall the H file. Someone had written to him in relation to the file but he could not locate it;

- The Respondent would deal with the delivery of the documents required in the High Court Order in his witness statement to be provided in compliance with the Order by 22 March 2012 ;

- The Firm (as distinct from the LLP) did not operate a client account. The LLP did operate a client account but these documents were sent to the Official Receiver when the Firm was wound up;

- The Respondent agreed that Mr Page could take the original Mr G client matter files as long as the Respondent was provided with a copy.

15.7 Mr Page described a search of the offices in the presence of the Respondent which commenced at 1:40pm and finished at 3:55pm. The Firm's office cheque and paying-in books were copied, and the following items were found:

- A General Form of Judgment dated 29 June 2011 in relation to OA v H;

- Invoices for professional fees for work done by Morgan Walker, the current entity;

- Documentation in relation to undertakings in the V v R matter.

15.8 Mr G's files consisted of approximately 50 bankers boxes. They were taken by a representative from a local copying company instructed to copy all of the files and supply the Respondent with copies and to deliver the original files to Devonshires who would forward the files to the SRA. The Respondent agreed to this arrangement. Mr Page confirmed that he was not asked to go back to the premises and this was his only encounter with the Respondent.

15.9 The "Practice Address" of 115A Chancery Lane, London WC2A 1PR defined in Warren J's Order was the address visited by Mr Page and his colleagues and was the address from which the Respondent was practising.

15.10 Mr Page referred to a document relating to the Firm and the Respondent entitled "Statutory Trust Account", which recorded monies recovered from intervened practices. Mr Page's evidence was that just over £11,000 was received from the Firm and represented the entire amount held by the Firm as at the date of receipt of these

funds. On intervention the following sums of money were received (ignoring small interest payments):

- 10 April 2012 £10,763.72
- 10 April 2012 £410.32
- 7 September 2012 £22.73 (from Devonshires)
- 30 January 2014 £90.97 (from The Law Society)

15.11 In answer to a question from the Chairman, Mr Page confirmed that he made handwritten notes at the time or shortly after the visits. The notes were entered into the Time Report on his return to his office. There was little else in the way of files at the Respondent's office, other than what was listed.

16. Gordon Oliver

16.1 Mr Oliver gave evidence on oath. He confirmed his full name as Gordon Colin Oliver. He has been a Solicitor since 1 April 1976 and is a partner at Hamlins LLP. He confirmed that the contents of his witness statement endorsed with a Statement of Truth signed by him and dated 12 December 2013 were true.

16.2 Mr Oliver, who specialises in commercial transactions, acted for V in the sale of assets to R represented by the Respondent. Mr Oliver did not act for V on the subsequent litigation. Mr Oliver confirmed that he had reviewed paragraphs 8 to 27 of the Rule 5 Statement, he agreed with the contents of those paragraphs and he believed them to be true. He had also reviewed the Exhibit to the Rule 5 Statement and most of the documents were familiar to him.

16.3 V was established for the purposes of the transaction and included the businesses of various subsidiary companies forming part of the group structure of which V was the parent. The transaction was channelled through V so that there was one vendor for the purpose of the sale to R. Hamlins was instructed to act for V, and V's proprietor was an established client. Mr Oliver had not previously acted in matters involving the Respondent.

16.4 The transaction was effected by the APA drafted by Mr Oliver's colleague under his direction. The APA included an undertaking at clause 3.2. The retention of £150,000 specified in that clause was present to protect R from any claims that might arise.

16.5 Mr Oliver considered the letter dated 18 December 2009 from the Respondent addressed to Hamlins and marked for Mr Oliver's attention. He was unable to remember who drafted the letter, which reflected the terms of the undertaking in the APA. He approved the letter on behalf of his clients. Mr Oliver regarded the letter as representing a solicitor's undertaking which he accepted in substitution for the relevant sum being placed in a deposit account and operated on the joint instructions of Hamlins and the Firm. In his view it was clear to the Respondent that the letter represented a solicitor's undertaking because Mr Oliver had to take specific instructions from his clients before accepting the same: Mr Oliver's initial recommendation to V was that there should be a joint deposit account operated on the joint instructions of both firms of solicitors. V decided that they were prepared to accept the solicitor's undertaking which Mr Oliver had presented to them as an

alternative. Mr Oliver was unable to say why his clients decided to accept the solicitor's undertaking. He had presented it to them as a "substantial document and a commitment on the part of the third-party giving it". Mr Oliver said that he trusted the letter: in 30 years he had never had the experience of an undertaking not being observed by any firm with whom he had dealt. He had no doubts whatsoever that what was being given in the letter was a solicitor's undertaking, and did not consider its terms to be in any way ambiguous. Mr Oliver did not consciously make an assumption as to whether the Respondent operated a client bank account: the Firm was a solicitor's firm licensed for the purpose of carrying out business and his belief therefore would have been that the Respondent was operating in accordance with the SAR and therefore had a client account which was separate from his office account.

16.6 The undertaking set out in all paragraphs up to but not including the final paragraph related to claims arising within 12 months of the APA. What Mr Oliver referred to as the "threshold of pain" when acting on behalf of the Seller was found at paragraph 7.2 of the APA. In order for a claim to attach to V, each of paragraphs 7.2 (a), (b), and (c) must apply by virtue of the use of the word "and" or nothing.

16.7 After 6 months the first half of the retention (£75,000) was released into Hamlins' client account in part-performance of the undertaking. Mr Oliver assumed that the Respondent was satisfied that the money could be released.

16.8 Hamlins wrote to the Firm on 17 September 2010 with respect to a variation of the undertaking. The reference on the letter was to one of Mr Oliver's property partners, who was involved in discussions regarding the contribution to dilapidations. Mr Oliver was sure that the property partner would have shown the draft to either himself or his colleague and one of them would have approved it before it was sent. V was content for £12,000 of the remaining retention of £75,000 to be released by the Respondent to his client R as a contribution towards potential future dilapidations. Mr Oliver assumed that the Firm placed the typed annotation on the letter from Hamlins and the handwriting added clarification to that annotation. He did not regard the variation as affecting the undertaking save in respect of the amount of money to which it applied. Authority for the payment to R of £12,000 was contained in a letter from Shane Moloney [sole director of V] to Hamlins dated 15 September 2010. A letter of the same date and to the same effect was sent direct from Mr Moloney to the Firm. The two letters did not conflict. Mr Oliver's professional opinion was that he was still on undertaking from the Respondent.

16.9 The sum of £63,000 was due and payable on 21 December 2010. Mr Oliver chased payment by letter to the Respondent dated 11 February 2011. The reason for the time lapse between the first anniversary of the APA and the date of Mr Oliver's letter was so that Hamlins could confirm with their clients V that V was not aware of any claims. The letter said:

> "No claim has become due and payable under the Agreement by 21 December 2010. Therefore, the balance of the Retained Consideration in the sum of £63,000 should have been received by our client on the 21 December 2010 but it has not been received by us or our client."

16.10 Hamlins made a formal demand for immediate payment and provided their client account bank details. Breach of undertaking was alleged in the final paragraph of the letter.

16.11 The Respondent replied in an e-mail to Mr Oliver's colleague dated 17 February 2011 timed at 15:11. He said that the undertaking expired in December 2010. Mr Oliver said that he later referred to that correspondence as "nonsensical". That comment was not intended to be pejorative; it was a "genuine comment" expressing Mr Oliver's inability to understand how the Respondent could possibly suggest that the undertaking had "expired". Mr Oliver did not, then or now, understand how the Respondent could make that suggestion. The only aspect of the undertaking that had expired was the period of time during which the monies were allowed to be retained unless there were claims which prevented the release of all or part of the balance under retention. Hamlins was under instructions that there were no such claims and therefore Mr Oliver did not understand how the Respondent could possibly suggest that the undertaking had expired.

16.12 In the same e-mail the Respondent asserted that there were claims under the agreement of which V was aware. Mr Oliver said that Hamlins had taken steps to get instructions from their clients before he wrote his letter of 11 February 2011. Mr Oliver checked again with V when the Respondent made this assertion. Hamlins had not received notification of any claims nor had V passed notification of any claims to Hamlins. Under APA, clause 7.4 the required procedure for making a claim was set out; Mr Oliver read that clause into his evidence. For a claim to be validly made the Buyer must give the Seller notice of the claim, specifying (in reasonable detail) the nature of the claim and the amount claimed within the backstop period of two years beginning with the completion date. Hamlins asserted that for a claim to be validly made, it would have to be dealt with at least to that extent during the period of one calendar year from completion if it was to affect the release of the retention under the terms of the undertaking. No such notice had been given to Mr Oliver's knowledge, and Hamlins checked the position.

16.13 On 16 May 2011, Mr Oliver's colleague wrote by e-mail to the Respondent. Mr Oliver read the e-mail into his evidence as follows:

> "I have been advised by our client that your client has instructed you to remit to us the balance of the Retained Consideration as set out in our letter to you dated 11 February 2011. I attach a copy of that letter for ease of reference. You will note that it contains our client account details to which the above-mentioned sum must be paid. Please do not hesitate to contact me if you have any questions."

16.14 The authority from R instructed the Respondent to send £63,000 to V. This was not the only time that R confirmed that there were no claims and the money should be released. The letter did not produce any money from the Respondent.

16.15 Mr Oliver became aware that V had complained to the SRA. Hamlins served a Statutory Demand on R. One response from R dated 22 June 2011 contended that the sum was due from the solicitors. The object of the exercise was not to obtain payment twice but to secure payment. V was prepared to claim the money from R or the

Respondent. At that time Mr Oliver believed that R still had a liability. There would have been no problem if the funds were still with the Respondent and if he had complied with the instructions which Mr Oliver had established had been given to him.

16.16 The Respondent replied by e-mail dated 29 June 2011 timed at 4:34pm to the demand for payment made on him. Mr Oliver's evidence was that he genuinely did not see any merit in the points that the Respondent was seeking to raise.

16.17 Mr Oliver was asked to read the final two paragraphs of his statement to the Tribunal, as follows:

> "14. Further correspondence followed between the Applicant and AS [the Respondent]. I have read these exchanges and I agree with the facts as set out by the Applicant. I remain firmly of the view that the undertaking (as varied) was in plain terms and that the sum of £63,000 was and remains payable by AS and MWS [the Firm] to [V]. All of AS's submissions to the contrary in both correspondence with my firm and the Applicant were made entirely without merit and I would refer to the contents of my e-mail of 29 June 2011 in this regard.
>
> 15. To this day, so far as I am aware, [V] has not received the sum of £63,000 from AS and MWS or any sums at all."

16.18 Mr Oliver was aware that summary judgment had been obtained by V against the Firm and was not surprised by that outcome. Exercising his professional judgement he could not see any reason for non-payment by the Respondent. Mr Oliver said that he had been left feeling professionally "very disappointed". These events created tension between V and Hamlins. "A solicitor's undertaking is one of the highest promises that one can encounter in professional life and they are not to be lightly given." Hamlins has rigorous procedures in place to prevent solicitors from giving undertakings without those undertakings and their discharge being properly recorded. There was a period of months when Hamlins attempted to have a dialogue with the Respondent's Firm to try to resolve the issue. Eventually Mr Oliver had to suggest to his clients that they should complain to the SRA because Hamlins had got nowhere in persuading the Respondent that the sum should be paid to V in accordance with the undertaking.

16.19 Even assuming that the Respondent was right, and that the undertaking to pay had not "bitten" because there was a claim that prevented payment, the Respondent should have returned the money to his client R. Under the terms of the undertaking, as reflected in the APA, if and insofar as monies were not due to be paid as consideration to V, they were monies which should have been returned or held to the order of the party that had paid the monies to the Respondent. He may have had arrangements with his client in relation to outstanding fees, but the monies in question could only be released to his client in accordance with the terms of the undertaking and the APA. If the Respondent had any evidence that there were claims, he should have put that evidence in front of Hamlins to take to their clients to see whether there was any truth or merit in what the Respondent was suggesting. The Respondent did not do so and V are vehement in saying that they have not got any claims notified to

them which would have reduced or impeded the release of the monies. The sum of £63,000 was payable to V.

17. Shane Moloney

17.1 Shane Moloney was unable to attend the hearing before the Tribunal at short notice due to absence on a family holiday. Mr Williams invited the Tribunal to read Mr Moloney's signed witness statement which was endorsed with a Statement of Truth. The Tribunal should give the witness statement such weight as it thought appropriate. Mr Williams submitted that the witness statement did not take matters much further. Mr Moloney was and is a Chartered Accountant and sole Director of V. His knowledge of the Respondent was gained in that capacity. V took proceedings, instructing solicitors to recover £63,000, and the witness statement was limited to that litigation. The Statement ended with confirmation that V is owed £63,000 plus legal costs of £40,000 and no payment has been received from either the Respondent or the Firm. In consequence there is an application pending to the Compensation Fund.

18. Rule 7 Supplementary Statement - The Case of Mr G

Abhishek Khaitan

18.1 Mr Khaitan gave evidence on oath. He confirmed his full name as Abhishek Khaitan. He is a Solicitor specialising in litigation and commercial property and a Partner at Bower Cotton Khaitan ("BCK"). He confirmed that the contents of his witness statement endorsed with a Statement of Truth signed by him and dated 6 March 2014 were true. He had reviewed paragraphs 4 to 39 of the Rule 7 Supplementary Statement, and believed the facts alleged in those paragraphs to be true and accurate. He had also reviewed the Exhibit to the Rule 7 Supplementary Statement.

18.2 Mr Khaitan was contacted by Mr VT who he had known for some time and who wanted to discuss as soon as possible matters relating to his great-uncle Mr G. Mr Khaitan visited Mr G at his London home on 16 or 17 September 2011 and Mr VT was present during the visit. They discussed Mr G's matrimonial proceedings which had been ongoing for 2 or 3 years. Mr G informed Mr Khaitan that during the proceedings he had sent some money to the Firm and the Respondent. Mr G and Mr VT felt that for the past year or so the Respondent had been "dragging the matter". Mr G had told the Respondent to settle the matter as soon as possible. On or around 10 or 11 September 2011 they informed the Respondent that they did not wish him to act for Mr G any longer. Mr VT and Mr G went to a hearing in the Family Court on 11 September 2011 and settled the matter in front of Judge Holman. Mr Khaitan was not present at that hearing. Immediately after the hearing date, Mr G instructed the Respondent to transfer money to Mr G's ex-wife. That did not happen, and on 18 September 2011 Mr G and Mr VT instructed Mr Khaitan to act on Mr G's behalf. Mr G was not then certain what had become of the $3.5 million because there had been no response from the Respondent to his enquiries. Mr Khaitan was and remains instructed to recover the money.

18.3 The funds were to effect the divorce settlement of £3.19 million. Mr G was subject to a Court Order to pay the settlement figure. To the best of Mr Khaitan's recollection, Mr G had initially paid £947,000 which he had in the State Bank of India. He had

transferred the $3.5 million in March or April 2011. The sum of £947,000 and $3.5 million at that time would have added up to about £3.19 million. When the funds disappeared Mr G was in litigation with Mrs G via solicitors. Mr G had to sell his house to pay the funds to his ex-wife and he had now moved to India. Effectively Mr G had paid the money twice.

18.4 Mr Khaitan was referred to the letter from SC to the Firm dated 25 February 2011. He confirmed that RNG was Mr G's brother. Mr Khaitan understood that Mr G had never been an Indian citizen. He had always been a Bangladeshi citizen and moved to England in the 1950s or 1960s. He then became a British citizen. His brother RNG, now deceased, was in India. The funds in question were Mr G's funds. The UBS account in Switzerland was always in Mr G's name and the instructions to operate the account came from Mr G. There was never any mention of RNG on the UBS account. The funds came from UBS to the Firm. Mr Khaitan understood from Mr VT and Mr G that the Respondent advised Mr G that the HUF would be a good way to save some money minimising payments to his ex-wife. Mr VT was at Court helping Mr G at the hearing on 9 September 2011 (corrected by Mr Khaitan from 11 September 2011) and he e-mailed the Respondent. Mr G had disinstructed the Respondent because the case was taking too long to resolve. Settlement had almost been agreed at the time when the case came before Mr Justice Holman.

18.5 Mr Khaitan was referred to the letter from RNG to SC dated 6 May 2011 and noted that settlement was virtually agreed. He was referred to the "Transactions Inquiry" form for the Firm and noted the deposit of $3.5 million in the Firm's bank account on 5 April 2011. Mr Khaitan's understanding was that the funds were to be held to the order of Mr G, who was the Firm's client. Mr G wrote to the Firm in March 2011 informing the Respondent that funds were being transferred from UBS to the Firm's account but Mr Khaitan could not see a copy of that letter in the bundle before the Tribunal. He believed that there was a letter from Mr G to the Respondent written at the same time as the letter of instruction from Mr G to the USB dated 28 March 2011. Mr Khaitan was "absolutely certain" in his professional opinion that the funds went into the Firm's account purely for the purpose of the settlement of the divorce proceedings.

18.6 When Mr Khaitan first received instructions, Mr G showed him the letter of instruction from the latter to USB dated 28 March 2011 and the UBS debit advice dated 6 April 2011 in relation to the transfer of the settlement to the Firm. Mr VT explained the two letters. Mr VT said that he and Mr G went to Court on 9 September 2011 because the Respondent and the Firm were delaying the proceedings and Mr G wanted to settle everything. The matter was settled and Mr G wrote to the Firm and the Respondent instructing them to transfer the funds straightaway to MR [the solicitors for Mrs G]. Mr Khaitan agreed that the letter from SC to the Firm dated 25 February 2011 told a different story. Mr Khaitan's evidence was that the reason for the letter from SC was that it was part of the "smokescreen" that the Respondent was trying to create to save funds for Mr G.

18.7 Mr Khaitan issued proceedings on behalf of Mr G against the Firm to recover the money. He had not before or since seen any evidence from SC releasing the Respondent from holding the money to SC's order. Mr Khaitan was referred to the Particulars of Claim issued on behalf of Mr G on 10 October 2011 and endorsed with

a Statement of Truth. Mr Khaitan confirmed that at paragraph 5 of the document he pleaded the transfer of the money on the basis that it was solely to be used for the ancillary relief settlement. This was confirmed at paragraph 7 of his witness statement to the Tribunal.

18.8 Mr Khaitan agreed with Mr Williams that the letter dated 12 September 2011 from the Firm to BB was a letter of instruction from the Respondent to the Bank to convert the $3.5 million to Indian Rupees. Mr Khaitan did not know why the Respondent gave those instructions to the BB. He confirmed that 12 September 2011 was the Monday following the hearing on Friday, 9 September 2011. Mr Khaitan was referred to the draft from the BB made payable to the RBI, Calcutta for 164,819,300 Indian Rupees. Mr Khaitan said that his instructions were that several e-mails and letters were written by Mr G and Mr VT to the Respondent and the Firm between 9 and 17 September 2011 asking about the funds and instructing their release, without response from the Respondent or the Firm.

18.9 Mr Khaitan was asked to look at the Respondent's Affidavit dated 3 October 2011 in the litigation between Mr G and the Firm. Mr Khaitan's evidence was that the Respondent was completely wrong in stating in that Affidavit that the funds came from RNG: they came from Mr G's account with UBS in Switzerland. Mr Khaitan was referred to paragraph 8 in which the Respondent said that he:

> "had no idea how [RNG] had remitted the funds to us and in the uncertainty and pressure under which we were being put into we transferred the entire funds to [RBI] (sic). The rightful claimant to the money may simply attend the [RBI], produce the appropriate documents as to their rights to such money and explain under what circumstances and or reasons such remittance of such money out of India whenever it took place and claim it (sic)."

Mr Khaitan's evidence was that he was "quite amused" when he saw this paragraph. The Respondent and his Firm had been "sitting on" the money since April [2011]. The money clearly came from UBS in Switzerland from Mr G's account. The "pressure" on the Respondent was from Mr VT and the Respondent's ex-client Mr G between 9 and 15 September 2011 asking where the funds were and why they had not been transferred to MR. This was not "pressure" but part of the Court's Order.

18.10 Mr Khaitan was asked to look at the letter he had written on behalf of Mr G to the Firm on 5 October 2011. He read the letter to the Tribunal from paragraph 5 to the end. The letter set out a history of events, asked questions about the whereabouts of the funds and required an immediate undertaking from the Respondent/his Firm to take all reasonable steps to cause the equivalent of $3.5 million to be paid to MR in accordance with the Court Order of Holman J, to hold the accrued interest in Mr G's client account, to inform Mr Khaitan's firm of the steps taken to achieve those outcomes, and to provide copies of all correspondence. The letter concluded with an indication that orders with penal notices attached would be sought against the Respondent/his Firm in similar terms in the absence of receipt of the undertakings requested. The Respondent did not provide a satisfactory reply to the letter. Affidavits and statements were submitted during the course of Mr G's proceedings and it took up to the end of January 2012 to get the whole picture. In particular, the Respondent described his actions in paragraph 9 of his statement dated 3 October 2011. It became

apparent in one of the hearings before the Court that the Respondent had given the bank draft (it was not known when) to an associate of his called Mr S who was to take the draft and deposit it at the RBI.

18.11 Mr Williams took Mr Khaitan to his statement dated 6 October 2011 in the same litigation and asked him to read paragraph 18 to the Tribunal. Mr Khaitan had stated that it was likely that the Respondent had remitted $3.5 million to the Bank of India with knowledge that those funds were the subject of the Order of 9 September 2011. He referred to an e-mail dated 13 September 2011 timed at 10:03 in which the Respondent acknowledged having received a copy of the sealed Order. Mr Khaitan continued by saying that it would have been physically impossible to have conveyed the draft to the Bank of India in Calcutta before 10:03am on 13 September 2011. He suggested that it followed that the draft could only have been lodged by the Firm after it had knowledge of the Order of Holman J in the matrimonial proceedings. Mr Khaitan elaborated on this evidence. The banker's draft was issued on 12 September 2011, a Monday. Even if what the Respondent said was correct and he handed over the draft to his associate Mr S who took the night flight to India, it was physically impossible for what the Respondent said had happened to have happened. The first flight which arrived into India (Delhi) was "not before" 11:30am Indian time. The first flight to arrive in Calcutta was "not before" 3:30pm. It was therefore physically impossible to lodge the draft at any branch of RBI in India before 10am on 13 September 2011.

18.12 Mr Khaitan confirmed that the Respondent acknowledged receipt of an e-mail from MR containing the sealed order from the Court by e-mail dated 13 September 2011 timed at 10:03. His evidence was that it would "certainly" have been possible to stop the payment away of the money upon receipt of the Court Order. The fact that the draft was finally lodged at the RBI, which is like the Bank of England, on 29 November 2011 showed that the Respondent had plenty of time in which to stop the draft.

18.13 Mr Khaitan was asked to look at a letter dated 12 September 2011 sent by MR by hand and e-mail to the Respondent which, amongst other things, enclosed the draft Court Order. Mr Khaitan's evidence was that he thought the Respondent was aware of Holman J's Order on 9 September 2011. However, he was certainly aware of the Order on 12 September 2011, which was the day the banker's draft was issued. If the Respondent gave the banker's draft to Mr S on that day, the only way the draft could not be stopped was if there was no contact with the person carrying the draft. The Respondent said that he did not have any contact details for Mr S. He also said that there was nothing that he or the Firm could do to restore the position "now that the draft has been issued and lodged" in paragraph 24 of his statement dated 11 October 2011.

18.14 Mr Khaitan considered the document relating to the presentation of the banker's draft stamped and dated by the RBI on 29 November 2011. Mr Khaitan's evidence was that as soon as this document was lodged, the RBI, having been provided with copies of the Order of Mr Justice Lloyd Jones made in Mr G's proceedings, wrote to all parties concerned. The RBI refused to accept the draft and sent it to Morgan Walker Solicitors, Calcutta. Mr Khaitan had been informed by solicitors instructed in India that this was an Advance Tax form submitted on behalf of Morgan Walker Solicitors,

Calcutta deposited with RBI for the same amount as the draft. Mr Khaitan considered this to be a "lot of money" to be paying in advance tax.

18.15 There was no merit in the Respondent's assertion that there was doubt about the provenance of and beneficial entitlement to the funds sent to the Firm by Mr G. Mr G was never an Indian citizen so there was no question of violation of any laws in India. The Respondent was trying to say that the entire fund was part of the HUF. Mr Khaitan believed that assertion to be "completely wrong" because the money in question had always belonged to Mr G. There was no mention of his brother RNG in relation to the accounts or property.

18.16 Mr Khaitan was referred to paragraph 12 of his statement dated 15 February 2012 filed in Mr G's proceedings, which dealt with the refusal by RBI to accept the draft and its return to Morgan Walker Solicitors, Calcutta. Mr Khaitan said that he understood there to be two firms operating from the same address: one was I. C. Sancheti & Co founded by the Respondent's father and run by his brother; the other was Morgan Walker, Calcutta which was a subsidiary of Morgan Walker in London. RBI returned the draft with a letter to Morgan Walker, Calcutta by registered post.

18.17 Mr Khaitan was asked what the various Court Orders in Mr G's proceedings were aimed at achieving. He answered that the Court was at first trying to find out where the draft was, and later trying to get it back to England for Mr G. Despite the best efforts of the Court, that had not happened. His Honour Judge Seymour QC found the Respondent to be in contempt of court and made an Order that the Respondent should attend court to be cross-examined. The Respondent did not attend.

18.18 Mr Khaitan was taken to the letter written by the Respondent to BCK dated 29 February 2012. In that letter the Respondent said that it was impossible for him to attend the court for examination on 2 March 2012 because he was "away from London". Mr Khaitan was asked to read paragraph 3 onwards to the Tribunal. The Respondent said that the permission for cross-examination appeared to be limited to "whereabouts and means of gaining access" to the draft. He said that he had "no further knowledge on whereabouts and/or suggestions on your means to gaining access to the bank draft. This statement itself answers the entire objective of the cross-examination." The Respondent's explanation, as drawn from that letter, was that he did not know what had happened to the draft.

18.19 In the same letter, the Respondent invited Mr Khaitan to send further specific questions to him in advance of the cross-examination. He said that it was likely he would not be able to answer anything:

> "… in view to what has been already set out in my previous letters in detail and nothing has changed except some enquiries and/or investigations appear to have been started by the Enforcement Directorate in Kolkata with which I am legally bound to co-operate with in-confidence (sic). The funds have been banked and/or frozen and seized by them. Enforcement Directorate have the authority in law to seize the funds irrespective of bank draft as funds representing this litigation have been taken out of India in breach of Indian laws in the past by way of money-laundering."

The Respondent continued:

> "Without prejudice to the above, I can repeat this answer before a Judge if you can arrange to set up video conference facility which is available at the Royal Court of Justice (sic). Please confirm the date, time and requisite details including the name of the Judge. I will say that in my view it is impossible to have the bank draft or funds travel back to United Kingdom under Indian law (sic). I have no influence or control over the matter. I cannot do an impossibility (sic)."

The examination did not take place on 2 March 2012 and was adjourned with an Order for costs in favour of Mr G.

18.20 Mr Khaitan confirmed his evidence at paragraph 20 of his witness statement to the Tribunal, namely that on or about 1 December 2011, the RBI returned the banker's draft to BB citing the Order of Lloyd Jones J dated 11 October 2011. It was not clear how the RBI had obtained the draft which was last heard of when it was returned to Morgan Walker Solicitors, Calcutta. Mr Khaitan wrote to the BB's Chief Executive based at City Road, London on 21 January 2014. The letter confirmed that the draft dated 12 September 2011 became invalid on 11 March 2012 with the physical draft currently being with the Enforcement Directorate in India. Mr Khaitan requested the BB to arrange for the immediate transfer of 164,819,300 Rupees to the Bank's main branch in the United Kingdom together with interest accrued from 13 September 2011 and from there to the SRA's agents, Devonshires. Mr Khaitan was instructed to apply for Directions to His Honour Judge Seymour QC in the absence of a response from the Bank. The Bank did not respond.

18.21 A letter from the Directorate of Enforcement was addressed to Mr G dated 16 December 2013. The letter stated that "it is intimated that the investigation in the matter of [Mr G] and others is closed at this end". Mr Khaitan's evidence was that the Directorate of Enforcement was in a position to release the draft. His view, albeit not as an expert in banking law, was that the draft had expired on 11 March 2012. He could not see any reason why the BB could not now pay the monies to Devonshires. He described it as a "chicken and egg" situation: the BB say that unless the Directorate of Enforcement writes directly to them they will not write to the Directorate. The Directorate says that it will not release the draft unless the BB write to the Directorate.

18.22 Mr Khaitan read the final paragraph of his witness statement to the Tribunal in which he said the following:

> "As such, I would seek to reiterate to the Tribunal what I set out in paragraph 20 of my Witness Statement that:
>
> 'Clearly, he [AS] did not need to remit the monies at all to the Bank of India or anywhere. A solicitor in that position would not properly seek to frustrate the will of the High Court, but would, (if he had any serious doubts as to the propriety of complying with any order the Court had or might make) seek directions or a variation of the Order'."

18.23 In Mr Khaitan's experience as a litigator, if the Respondent had felt uncertain or under pressure he could have involved himself in the litigation in the Family Division. The Respondent would then have been protected when an Order was made by the Court.

18.24 The Chairman asked Mr Khaitan how unusual it was in his experience (albeit as an English solicitor, not an Indian lawyer or a specialist solicitor in banking) to transfer large sums of money to India by anything other than bank transfer. Mr Khaitan's evidence was that it was "very unusual" in his experience.

19. Rule 7 Supplementary Statement - The Case of AHL

Katherine Emily Farthing

19.1 Ms Farthing gave evidence on oath. She confirmed her full name as Katherine Emily Farthing. She is a Solicitor specialising in litigation at Lawrence Graham LLP ("LG"). She confirmed that the contents of her witness statement endorsed with a Statement of Truth signed by her and dated 10 December 2013 were true and accurate in every detail. She had reviewed paragraphs 46 to 54 of the Rule 7 Supplementary Statement containing alleged facts, and believed them to be true. She had also reviewed the relevant documents exhibited to the Rule 7 Supplementary Statement and to the best of her knowledge they were true copies of the original documents.

19.2 Ms Farthing said that AHL, based in Mauritius, became a client of LG in December 2011. She believed that LG's Real Estate department had acted for AHL previously, but she personally had not acted for the client before. AHL instructed LG's Real Estate department in December 2011 to pay the Stamp Duty Land Tax ("SDLT") liabilities in respect of properties that they had bought and to register the properties with the Land Registry. It had become apparent that the Firm had not paid the SDLT liabilities despite the fact that AHL had paid the SDLT monies to the Firm as part of the completion monies. The LG Litigation department was instructed to write to the Firm to seek repayment of those monies.

19.3 The two properties referred to on the Completion Statement were the two properties which AHL had instructed the Firm to purchase. Ms Farthing understood from colleagues that the amount of Stamp Duty of £135,080 shown on the Completion Statement was not the correct amount for the purchases. She confirmed that the copy of AHL's bank statement exhibited to the Rule 7 Supplementary Statement showed the transfer of the completion monies from AHL's bank account to the Firm. The amount transferred was the dollar equivalent of the sterling amount shown on the Completion Statement. She believed that the properties were purchased on 24 January 2011. The deadline for payment of Stamp Duty was 23 February 2011, namely 30 days after the completion date. The Stamp Duty was not paid by the Firm. The SDLT liability, the late payment fee and interest had to be paid in order to register the properties in AHL's name.

19.4 Ms Farthing corresponded with the solicitors who acted for the vendors. She read to the Tribunal paragraphs 7 to 11 of her witness statement which related to that correspondence. There had been correspondence between the vendors' solicitors and the Firm in respect of failure to serve notice of transfer on the managing agents of the

properties, resulting in the vendors receiving final demands for payment of service charges. The vendors' solicitors threatened to report the Firm to The Law Society. The Firm responded on 6 June 2011 to say that they were taking instructions from AHL. Other solicitors informed the vendors' solicitors on 30 June 2011 that their clients were still registered as the proprietors of the properties. In September 2011 AHL became aware that the Firm had not discharged the SDLT liability or registered the purchase with the Land Registry. This was 8 months after the funds had been remitted to the Firm. AHL instructed the Respondent to return the monies to them. The Respondent replied that the Firm had gone into liquidation and that he had no access to its accounts to ascertain whether the monies had been received.

19.5 Ms Farthing wrote to the Respondent on 14 December 2011. She read her letter to the Tribunal, and confirmed that the statements made in it were true. She did not receive any direct response or acknowledgement from the Respondent, but she did receive a "read receipt" for the electronic copy of the letter at some point in January 2012.

19.6 On 22 December 2011 Ms Farthing made a report to the SRA. AHL transferred additional monies to LG so that they could deal with the payment of SDLT plus interest plus the late payment fee and register the purchases. She believed that the registration was completed in January 2012. Ms Farthing then made an application on behalf of the AHL to the SRA's Compensation Fund in respect of the monies that were believed to have been misappropriated by the Firm. AHL received a payment from the Compensation Fund in July 2013 which Ms Farthing believed to be in the sum of £136,010 in respect of the SDLT liability and Land Registry fees. Correspondence continues in relation to AHL's costs.

19.7 Ms Farthing wrote to Devonshires by e-mail on 8 March 2012 stating that AHL had not received their client files from the Respondent into either their possession or their control. Although they had been requested, LG had not received the files and, to the best of her knowledge, neither had AHL.

20. <u>Rule 7 Supplementary Statement - The Case of H</u>

<u>Akiwande Akiwumi</u>

20.1 Akiwande Akiwumi had not attended the hearing before the Tribunal. In all the circumstances it would have been disproportionate to fly the witness from America (where he was based) to deal with this matter. That decision was taken in the context of the proceedings as a whole and applying proportionality to the costs to be incurred by the Applicant with respect to this material. Mr Williams asked the Tribunal to give the witness statement considerable weight. Mr Akiwumi described himself as an "in-house lawyer" and his witness statement was endorsed with a Statement of Truth. The contents of the witness statement were in accordance with the applicable documents exhibited to the Rule 7 Supplementary Statement.

Submissions – Rule 5 Statement – The Case of V

21. Applicant's Submissions

21.1 The undertaking was in plain terms. R had confirmed that there were no claims which would operate to prevent payment by the Respondent. Such confirmation did not have to be provided within the 12 month period referred to in the undertaking. The 6 year limitation period was irrelevant. The undertaking had not expired and in any event such an assertion by the Respondent ran contrary to his own reliance on the 6 year limitation period. The test for dishonesty was the test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. Mr Williams referred the Tribunal to its Practice Direction No. 5, which stated:

> "For the avoidance of doubt in appropriate cases where a Respondent denies some or all of the allegations against him regardless of whether it is alleged that he has been dishonest and/or disputes material facts and does not give evidence or submit himself to cross-examination the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This direction applies regardless of the fact that the Respondent may have provided a written statement to the Tribunal."

21.2 The Respondent was not present to give evidence or be cross-examined and the Tribunal could draw an adverse inference from his absence if it so wished. Mr Williams invited the Tribunal to do so.

21.3 Rule 24 SCC stated as follows:

> "An undertaking means a Statement made by you or your firm to someone who reasonably relies upon it, that you or your firm will do something or cause something to be done, or refrain from doing something. The undertaking can be given orally or in writing and need not include the words "undertake" or "undertaking"."

He submitted that an undertaking amounted to a promise which was why it was so serious if it was breached. The Respondent had given a clear undertaking in his letter to Hamlins dated 18 December 2009.

21.4 Under the APA, all three limbs specified at clause 7.2 must exist for the Seller to be liable for a claim, as evidenced by use of the word "and" at the end of clauses (a) and (b). The Respondent part-performed the first limb of the undertaking by releasing £75,000 on 21 June 2010. The Respondent had an opportunity to express any doubt about whether he had given an undertaking when the undertaking was varied on 17 September 2010, but he did no such thing. It was clear that the undertaking was varied on or around that date. The only remaining question to be answered was whether there were any valid claims against V, to which the answer was "no" as evidenced by the e-mail dated 29 June 2011 from R to Mr Oliver of Hamlins, copied to Mr Moloney and the Respondent. That e-mail recorded that R did not foresee a claim against V and had informed the Firm accordingly and instructed them to release the retention of £63,000. V also confirmed this position to the SRA in a telephone call

on 11 August 2011. In his e-mail to Mr Oliver dated 29 June 2011 the Respondent appeared to suggest that there was a claim which meant that his undertaking did not bite. However, the evidence pointed in the opposite direction. If the Respondent was correct, he had to hold £63,000 until the claim that he said existed was resolved. The Respondent did not appear to dispute the validity of the undertaking in its original form or as varied.

21.5 Mr Williams dealt with the Respondent's reply to the SRA dated 4 August 2011. R had authorised the Respondent to pay £63,000 to V. The 6 year limitation period had nothing to do with the undertaking, which was for a 12 month period. Reliance by the Respondent on a "claim" and the existence of the limitation period did not justify the Respondent's conduct. For the Respondent to suggest that the undertaking had expired conflicted directly with his reference to claims pursuant to the limitation period. If the undertaking had expired, which was not accepted by the Applicant, the funds had to be distributed either to R or to V, neither of whom had received one penny of the £63,000. The Respondent had no business in holding on to the money, the current whereabouts of which was not known. In the same letter the Respondent said that he considered the undertaking to be "discharged", that there was no obligation to meet any payment liability in connection with the undertaking, and payments were not due as there were existing or subsisting claims. This paragraph of the letter was "hopelessly self-contradictory". Potential future claims were of no relevance given the wording of the undertaking which was limited to a 12 month period and the instructions given to the Respondent by his clients. The Respondent's purported defence made no sense. Mr Williams submitted that the clients' instructions took precedence and the Respondent had to comply with those instructions. The clients could be cautioned on the basis that a claim might "come back on them" but the Respondent could not even be negligent in those circumstances, because his clients had told him that they were aware of the claim situation and did not think it was a serious risk. If the Respondent's clients had asked for the £63,000 to be returned to them, he would have had to have said that he was on undertaking either to distribute the money to V or to hold the money pending resolution of the dispute. Claims were defined by the APA, and there was no evidence that that the three limbs of claim had arisen. Even if the three limbs of claim had arisen, the clients' instructions must prevail.

21.6 The Order of Master Fontaine on 12 February 2012 constituted a judicial finding that the Respondent was in breach of the undertaking to the extent of £63,000 plus interest. That Judgment did not bind this Tribunal because it related to a civil case and was decided on the civil standard of proof. The Tribunal was invited to pay "serious heed" to the fact that in those proceedings that Order was made. The Tribunal was cautioned to take particular care when considering the letter from Capita to the SRA dated 24 April 2012 concerning the assertion about what the Respondent had said during the course of Capita's investigations about the use of the £63,000. It was however open to the Tribunal to give the comment such weight as it thought fit.

21.7 In relation to the allegation of dishonesty, Mr Williams submitted that the undertaking was clear in its terms, as was the variation. Being bound by the undertaking, the Respondent was obliged to pay the £63,000 to V. If the undertaking had not "bitten" as asserted by the Respondent, he had to retain the money or pay it back to his client. The one person who could not keep these funds after the 12 month period was the

Respondent. He said that payment would not be due for at least another 4 years when writing to the SRA on 7 September 2011. If that was correct, the money had to be retained. There was an "irresistible inference" that the Respondent had misappropriated these funds in a dishonest way. He had not sought to explain or justify himself or attend the hearing to give evidence. Given the terms of the undertaking, the only honest option for the Respondent was to retain the £63,000 and pay it out when instructed or ordered to do so. He did neither. That was plainly dishonest by the standards of reasonable and honest people. When the Respondent failed to pay the £63,000 as required and failed to account for the £63,000, he knew that what he was doing was dishonest by those same standards. That was particularly evidenced by his assertion that payment "is not due for at least another 4 years". In such circumstances the Respondent would have been obliged to retain the funds for that period. The fact that the Respondent failed to comply with the Order dated 17 February 2012 and made an unsuccessful claim to the ARP seeking payment of the claim by V led to the inescapable conclusion that the Respondent had not retained some or all of the funds. This was a blatant breach of a professional undertaking by the Respondent causing losses to V and creating a potential consequential loss to his clients R. The irresistible inference must be that the Respondent had acted dishonestly

21.8 There were 4 allegations and 2 allegations of dishonesty in the Rule 5 Statement. The first was breach of Rule 10.05 SCC in respect of the undertaking as given and varied. The second allegation related to the failure to account for funds held under the undertaking. At the very least the Respondent had an obligation to say where the money was. The third allegation related to the failure to comply with the Order of Master Fontaine. This Order would have been perfectly easily satisfied had the undertaking been complied with, because the monies would have been readily available to be paid out further to the Order. Even on the Respondent's own case he had an obligation to retain the monies.

21.9 The fourth allegation related to failure to maintain properly written up books of account contrary to Rule 32(1) SAR. That Rule stated that a solicitor must at all times keep accounting records properly written up to show the solicitor's dealings with client money received and any office money relating to any client matter. The £63,000 was not paid into client account and it was not required to be paid into client account under the terms of the undertaking. There was however a clear undertaking under Rule 32(1) to keep records and books of account in relation to these monies, which may ultimately have helped to answer the question as to their whereabouts.

21.10 There was no merit in the representations made by the Respondent on his own behalf in, for example, his e-mail to Mr Oliver dated 29 June 2011 timed at 4:34pm and his letter to the SRA dated 4 August 2011. These allegations were "desperately serious" even without the allegations of dishonesty.

21.11 The authorities relied upon by the Applicant in relation to the matters in the Rule 5 and the Rule 7 Statement were as follows:

- Twinsectra Ltd v Yardley and others *ibid*. The Tribunal was referred to the headnote in which the test for dishonesty in this jurisdiction was set out. This was the test to apply to the dishonesty allegations in respect of the case of V (and Mr G);

- Bolton v Law Society [1994] 1 WLR 512 - the classic case in this jurisdiction. The Tribunal was referred in particular to the passage commencing "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness…" to "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price." The standards set out in and between those paragraphs were the standards required of solicitors and should be applied by the Tribunal in assessing the conduct;

- Weston v Law Society The Times Wednesday July 15 1998. This case related to stewardship of client funds and was particularly relevant to the cases of V, Mr G and AHL;

- Bultitude v The Law Society [2004] EWCA Civ 1853. Lord Justice Kennedy, with whom Lord Justices Laws and Arden agreed, held that proof of dishonesty in a case where a solicitor was not shown to have intended permanently to deprive his clients of their funds was not dependent upon proving that intention. This had particular application to the case of Mr G where there was some possibility of the monies being repatriated;

- Beller v The Law Society [2009] EWHC 2200 (Admin). Lord Justice Thomas (as he then was) said, repeating the words of this Tribunal, that "… the reputation of the profession depended upon solicitors honouring undertakings, and it was essential to the conduct of non-contentious business that people could repose trust in a solicitor performing undertakings, and a solicitor should, therefore, never put himself in a position where he would breach an undertaking." Thomas LJ continued at paragraph 16 "But a solicitor who gives to other people an undertaking must always act on the assumption that the persons to whom he gives an undertaking must be protected, and that he cannot rely upon the apparent trustworthiness of his client to see him right. He has to stand behind his undertakings himself". The thrust of the Judgment was that solicitors existed to protect people and undertakings were given specifically with that protection in mind.

21.12 The Chairman of the Tribunal referred to the High Court decision in The Law Society v Waddingham, Smith and Parsonage [2012] EWHC1519 (Admin) which he found to be of assistance when applying the principles set out in Twinsectra.

Findings of Fact and Law - Rule 5 Statement – The Case of V

22. The Respondent was treated by the Tribunal as having denied all the facts and the 4 allegations and the 2 allegations of dishonesty in the Rule 5 Statement. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove the facts and the allegations beyond reasonable doubt.

23. **Allegation 1.1 - Breached the terms of a professional undertaking given on 18 December 2009 and varied on or about 17 September 2010 contrary to Rule 10.05 SCC. Allegation 1.1 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved.**

23.1 The Tribunal considered whether the letter dated 18 December 2009 from the Firm on the Firm's headed paper on the face of which the Respondent was described as "Director and Head of Practice" and signed by the Respondent to Hamlins constituted a professional undertaking as defined in Rule 24 SCC quoted at paragraph 21.3 above. The letter was headed "Re: Undertaking in respect to the sale of the business by [V] to [R]". There was reference in the content of the letter to an undertaking and it included the words "We undertake to hold upon Completion the Retained Consideration in the sum of £150,000 in our bank account and disburse these sums in the following manner:…". The Tribunal found that this letter constituted a classic example of a professional undertaking as defined by Rule 24 SCC, given by the Respondent on behalf of his Firm to Hamlins. The wording was crystal clear as to the undertaking's terms and effect. In any event, the Respondent admitted to the SRA in his letter dated 7 September 2011 that there was an undertaking. His argument was that it was conditional, that it had expired, that payment was not due for at least another 4 years, and that there were claims. This was clear and unequivocal evidence that the Respondent himself accepted that he had given a professional undertaking on behalf of the Firm to Hamlins. The Tribunal found as a fact that the professional undertaking to hold the Retained Consideration as set out in the letter dated 18 December 2009 was given by the Respondent of behalf of the Firm of which he was sole director and head of practice as recorded on the headed notepaper.

23.2 Having given a professional undertaking to Hamlins, the Tribunal found as a fact that the Respondent was personally bound to perform the undertaking. Rule 10.05 SCC made it clear than an undertaking by a solicitor given in the course of practice must be fulfilled.

23.3 The Tribunal considered whether the payment of £75,000 made on 21 June 2010 was by way of part-performance by the Respondent of his professional undertaking. The Tribunal found as a fact that that the answer to this question was "yes" and that it was perceived to be such by Hamlins and their clients. The payment was contemplated not only in the undertaking but also in the APA at clause 3.2. The Respondent's client R instructed the Respondent to make the payment, which he did. The importance of the perception of those receiving payment pursuant to a professional undertaking was made clear by the Rule 24 definition which referred specifically to "someone who reasonably relies upon [the undertaking], that you or your firm will do something or cause something to be done, or refrain from doing something." The undertaking was of critical importance to the receiver (in this case Hamlins and their clients V) because they would be relying upon its terms, including taking steps to their potential detriment. The Tribunal found that V decided to accept an undertaking rather than require a joint account in the names of both firms of solicitors based on what they perceived to be the certainty that the Respondent's professional undertaking would be honoured. Hamlins and V had no reason to doubt the Respondent's promise as a Solicitor of the Senior Court.

23.4 The Tribunal asked itself whether the endorsement signed by the Respondent on the letter from Hamlins dated 17 September 2010 (also confirmed by an endorsed letter from V to the Respondent) constituted a variation of the undertaking, and, if so, was the Respondent personally bound to perform the undertaking as varied. The typed endorsement referred to the Firm and used the words "reconfirm the undertaking dated 18 December 2009 as varied by this letter". The endorsement continued with words in manuscript stating "Now our undertaking is limited to the sum of [£63,000]". There was no evidence that the undertaking had been varied in any other particular. The variation was entirely in accord with the terms of the original undertaking as evidenced by use of the word "reconfirm" save for the change to the retained amount as agreed between the parties. The sum of £12,000 from the retained consideration was authorised by Hamlins and their clients V to be paid out to the Respondent's client R in relation to future potential dilapidations, reinforcing the basis upon which the money was being held by the Respondent. The Tribunal found as a matter of fact that the endorsement on the letter did constitute an agreed variation of the undertaking, and that the Respondent remained personally bound to perform the varied undertaking as nothing save for the amount retained had been varied.

23.5 The Respondent had made various representations on his own behalf, albeit not to this Tribunal because he had disregarded the Direction made (and repeated more than once) that he should file and serve a response to the allegations in the Rule 5 (and Rule 7) Statements. The Tribunal carefully considered the merits of those representations. The Respondent argued that the undertaking had expired. Mr Oliver described that argument as "nonsensical", and clarified in his evidence to the Tribunal that he did not intend to be pejorative but that he simply did not understand the Respondent's argument because it made no sense to him. The Respondent appeared on the face of the documents to have raised this argument for the first time on 17 February 2011. He was told by Hamlins in an e-mail dated 31 May 2011 that a solicitor's undertaking did not expire, but could be withdrawn with the agreement of the party that relied on it or discharged by fulfilling the action specified in the undertaking, neither of which had happened. The Tribunal agreed with that view, and in doing so accepted the evidence of Mr Oliver, who was an experienced commercial lawyer who gave his evidence clearly and impressively without overstatement. The objective of the undertaking was to provide for certain events occurring within 12 months when it was not known to the parties or their legal representatives whether those events would occur or not. To that extent it was a protective measure. If there had been a claim after the period of 12 months after the completion date, the parties would have sorted this out between themselves. It was not for the Respondent to decide unilaterally that the undertaking had expired. He did not even take the time to investigate his alleged belief with anyone else, for example Mr Oliver or his own clients who were telling him to release the money. The Tribunal found that the Respondent's representation that the undertaking had expired was entirely without merit. He appeared to be importing words and concepts into the undertaking that were not present. The Tribunal found as a fact that the undertaking had not and could not expire, it was not withdrawn, nor was it discharged, satisfied, fulfilled or forgiven.

23.6 The Respondent had also suggested on numerous occasions post-12 months after completion that there were claims (see for example, his e-mail to Mr Oliver dated 29 June 2011 in which he suggested that Mr Oliver was aware that there "is valid and subsisting dispute", and his letter to the SRA dated 7 September 2011 where he

suggested that "claims may still subsist"). His clients had instructed him to release the £63,000 to Hamlins as evidenced by R's letter to Mr Oliver, copied to the Respondent dated 29 June 2011. There was no evidence that the Respondent had challenged that instruction or that he had suggested that it had not been received by him. Hamlins were in regular contact concerning the undertaking and it would have been an easy enough matter for him to say that he had not been instructed by his client to release £63,000 if he truly believed that to be the case. This was a commercial contract and R took a commercial view as to what they wanted to do regarding the risk of a claim arising, as they were entitled to do. Presumably R calculated the risk and found it acceptable. In their e-mail dated 29 June 2011, R wrote that they did not "foresee a claim" against themselves, and had accordingly informed Morgan Walker solicitors that "we do not have a claim against [V] and have instructed Morgan Walker solicitors to release the retention sums to V under the terms of its undertaking." The e-mail also made it clear that R had no objection to Hamlins demanding and seeking payment of £63,000 from the Firm payable under the undertaking. The Respondent was required to release the money in accordance with his clients' instructions even if he disagreed with the line that they were taking.

23.7 There had already been one variation of the undertaking in R's favour to allow for dilapidations. There was nothing preventing a further variation, subject to agreement between the parties, if R was concerned about the Respondent releasing £63,000 because of claims. The opposite was in fact the case as demonstrated by the documentary evidence. Each of the three limbs of APA clause 7.2 had to be in place before V was liable for a claim to R. This included the requirement at clause 7.2(c) that the claim was admitted by V or the claim had been adjudicated in accordance with the dispute resolution provisions contained in the APA. No such claim was notified, let alone admitted or adjudicated. The Respondent had not produced one shred of evidence to support his assertions of the existence of claims or disputes within the 12 month period after completion. That was not surprising bearing that the documentary evidence from his client R was directly to the contrary. The Tribunal found as a fact that there were no claims as carefully defined in the undertaking and APA which prevented performance of the Respondent's professional undertaking.

23.8 In the reasons given for his non-compliance, the Respondent introduced matters relating to the Statute of Limitations and placed some emphasis on time periods such as 6 years and 4 years (specifically in his letter to the SRA dated 7 September 2011). The Statute of Limitations was not referred to in either the undertaking or the APA. Mr Oliver in his evidence said that he could not understand the Respondent's point and the Tribunal agreed. The Tribunal could find no basis in fact or law for the Respondent's assertion. The Statute of Limitations was irrelevant: the period of time in which claims could be brought and have an impact on the release of the Retained Consideration was specifically stated in the undertaking and the APA. Claims had to exist and had to comply with APA clause 3.2 and clause 7.2 in respect of all three limbs. No such claims had been made. If the parties (including the Respondent) had intended the undertaking to be subject to the Statute of Limitations, they would have said so. The Tribunal found as a fact that there was no merit in this representation.

23.9 When writing to the SRA on 4 August 2011, the Respondent suggested that the undertaking was conditional and that the trigger for payment did not occur "within December 2010". He repeated his assertion that the undertaking expired in December

2010. The Respondent considered that the undertaking was discharged, that there was no obligation to meet any payment liability in connection with the undertaking, that payments were not due as there were existing or subsisting claims and new claims could not be ruled out. If the first assertion was correct, the later assertions were irrelevant; if the later assertions were relevant then the undertaking could not have been discharged. The Respondent was attempting to argue a *non sequitur*. If there was merit in the Respondent's representations, and the Tribunal found that there was none, the £63,000 should have been returned to R or held in a client account to R's order until he received instructions from R as to what to do with the money. If the Respondent was correct in his assertions, which the Tribunal found as a fact that he was not, the trigger for payment was 21 December 2010 and the £63,000 definitely did not belong to the Respondent or his Firm.

23.10 The Tribunal also considered in detail the Respondent's letter to the SRA dated 7 September 2011. The majority of the representations made in that letter are dealt with above. However, the Tribunal noted that the Respondent apparently readily accepted that the Firm had no ledger for client R. He suggested that no payment at any level was due to V i.e. this was an all or nothing case. He asserted that the funds did not come from client R nor were they to be returned to R or V. He said that "the funds have been applied/refunded as per direction/standing instructions of the parent group which remitted the money." The Tribunal observed that there was a complete absence of any evidence from the Respondent (or anyone else) to support that assertion, for example, copy bank statements or letter to the parent group notifying it of the payment. There was no evidence from the parent group that it had received the money, which should have been capable of being easily obtained if what the Respondent asserted was the truth. It seemed highly unlikely that the parent group would have taken no action when its subsidiary company R was served with a Statutory Demand by V in those circumstances. The undertaking required the Respondent to hold on to the money and he had no business in releasing it to the parent group. The Tribunal did not believe what the Respondent said about the whereabouts of the funds.

23.11 The Tribunal found that there was no merit in any of the Respondent's representations.

23.12 The Tribunal found as a fact on the documents and oral evidence from Mr Page and Mr Oliver that neither V nor R had received £63,000 or any part of it from the Respondent. Mr Oliver and his colleagues and V had struggled manfully and unsuccessfully to recover the money from the Respondent over a prolonged period of time. The Respondent was a professional man, required by his profession to protect and account for client money - and the Tribunal found that this £63,000 was client money - by explaining who he had paid it to and why, with evidence of the payment in support. If there was documentary evidence to support the Respondent's assertion that the money had been applied/refunded to the parent group, it was up to the Respondent to provide that evidence to the Tribunal. He had singularly failed to do so despite having been given every opportunity to put his case. An unsuccessful claim to the ARP was made, either by the Respondent or those acting for V, seeking payment of the Summary Judgment. It was illogical for the Respondent to have made, permitted or caused an application to be made to the ARP to fund the claim if he had retained the funds in the Firm's bank account. Alternatively, if he had genuinely

returned the funds to the parent group he would have been able to produce evidence of that fact to secure the return of the funds in satisfaction of V's Judgment. The Tribunal noted from Mr Moloney's statement that he made an application to the Compensation Fund on behalf of V in August 2012, the outcome of which was awaited as at the date when his witness statement was signed on 16 December 2013. It made no sense at all for the Respondent to have permitted these steps to be taken if he knew that the money had been sent to R's parent group (which had been his only hint as to the current location of the funds).

23.13 When the SRA's intervention took place, £63,000 was not found in the Firm's bank account. The Respondent as sole director of the Firm and as a Solicitor of the Senior Court had failed to provide any information as to the location of the money other than in the vaguest of terms. The Tribunal had already found that the Respondent had voluntarily absented himself from this substantive hearing. He had not provided a response to the Rule 5 Statement as directed by the Tribunal. The High Court decision in Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) was clear authority, now enshrined in the Tribunal's Practice Direction No. 5 which was sent to the Respondent with the Rule 5 and Rule 7 Statements, that a professional man was required to provide an explanation for his conduct if the drawing of adverse inferences by the Tribunal was to be avoided. The Respondent had failed to provide any plausible explanation for his conduct. The irresistible adverse inference which the Tribunal drew from his entrenched, and in the words of Mr Oliver "nonsensical" approach, was that he had used the £63,000 for his own purposes.

23.14 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found underlying allegation 1.1 proved by the Applicant beyond reasonable doubt.

Allegation 1.1 – Dishonesty

23.15 Allegation 1.1 included an allegation of dishonesty. The Tribunal considered the dishonesty allegation, applying the two-limbed test for dishonesty set out in the decision in Twinsectra *ibid*, which was settled law on the point. Applying the objective test, the Tribunal had to be satisfied beyond reasonable doubt that the Respondent's conduct as pleaded by the Applicant had been dishonest by the ordinary standards of reasonable and honest people. Mr Oliver, who impressed the Tribunal as a witness, had expressed great disappointment with the Respondent's conduct and had characterised an undertaking as "one of the highest promises one can encounter in professional life". The Tribunal had no doubt that reasonable and honest people applying their ordinary standards would find the Respondent's breach of his professional undertaking, expressed in clear terms, to pay to Hamlins acting for V the sum of £63,000, having been instructed also in clear terms by his clients R to do so, to be dishonest.

23.16 The subjective test required that the Respondent himself had to realise that by the ordinary standards of reasonable and honest people his conduct was dishonest. The Tribunal had rejected as wholly without merit the Respondent's limited explanations for his conduct. In the view of the Tribunal, the Respondent put forward excuse after excuse, including to the High Court, for why he had not sent the money to Hamlins in accordance with the undertaking. His excuses were considered carefully and with

great patience by Hamlins (who concluded that they could not be understood), by his own clients R, and were heard fully by the High Court at a point in the proceedings when the Respondent and his Firm were represented by Counsel. The High Court rejected his excuses, applying the civil standard of proof (rather than the higher criminal standard applied by the Tribunal). The Respondent exercised his right to appeal against the High Court's decision but failed to attend the hearing on 12 July 2012 when his application for permission to appeal was dismissed. The Tribunal viewed the way in which the Respondent dealt with the Court proceedings brought against his Firm by V as, at best deliberate prevarication, and at worst concerted and repeated attempts to manipulate all involved. The Tribunal recognised that some respondents could convince themselves that their actions were justified, in fact or in law or for some other reason. There might be rare and exceptional circumstances where the Tribunal's assessment of such respondents based on microscopic analysis of their conduct concurred with those respondents' convictions. In those rare and exceptional cases it might be appropriate for the Tribunal to find that the Applicant had not proved the subjective limb of Twinsectra beyond reasonable doubt. However, in this case the Tribunal was satisfied so that it was sure that this Respondent was not convinced that his conduct in breaching his professional undertaking was justified in fact, in law or for any other reason. This conclusion was evidenced by his explanations for his conduct (which often lacked any sense when taken at face value) and his complete refusal to accept or even to consider the possibility that another point of view might be valid. All attempts at reason were, in the view of the Tribunal, stonewalled by the Respondent. To argue tooth and nail that his clients R had a valid claim against V under the terms of the undertaking when his clients R had explicitly told him that that was not the case and had instructed him to pay £63,000 to Hamlins made no sense at all, unless the Respondent knew that he was acting dishonestly. The Respondent's actions as set out in the documents, the written and oral evidence and in his own explanations led the Tribunal to find beyond reasonable doubt that the Respondent realised from the outset that his conduct in breaching the terms of his professional undertaking was dishonest by the ordinary standards of reasonable and honest people. The Tribunal found beyond reasonable doubt that the Respondent broke the terms of the undertaking by failing to hand over £63,000 to Hamlins, despite being given numerous opportunities over a period of many months in which to do so, and that he knew that his conduct was dishonest. His actions after questions were asked about the whereabouts of the £63,000 were solely directed at evading detection and causing delay to assist him in evading detection. It appeared to the Tribunal that the purpose of the Respondent's bluff and prevarication, evidenced in part by the introduction of bogus legal arguments, was intended to wear down those asking questions about the money in the hope that they would give up and go away.

23.17 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found dishonesty as alleged in respect of allegation 1.1 proved by the Applicant beyond reasonable doubt.

24. **Allegation 1.2 – Failed to account for funds held pursuant to the said undertaking contrary to Rules 1.04 and 1.06 SCC. Allegation 1.2 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved.**

24.1 The Tribunal found as a fact that the Respondent had failed to account for £63,000 held pursuant to the undertaking. The money had not been paid to Hamlins or V or returned to R. It was not in the Firm's bank account at the point of intervention. The Respondent's only explanation for what he had done with the money had been rejected by the Tribunal.

24.2 Rule 1.04 SCC required a solicitor to act in the best interests of each client. In this situation, the Respondent's clients were R. The Tribunal was satisfied beyond reasonable doubt that the Respondent had not acted in R's best interests by failing to account for £63,000. R had received a Statutory Demand from V which no doubt affected R's credit rating, had had to defend its position and had been forced to make a claim against the Compensation Fund.

24.3 Rule 1.06 SCC required a solicitor not to behave in a way that was likely to diminish the trust the public placed in him or the legal profession. In this case, money entrusted to a solicitor, the Respondent, had not been accounted for – it had effectively disappeared with no credible explanation being given. No member of the public could view what the Respondent had done without having his or her trust in the Respondent and the legal profession shaken to the core.

24.4 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found underlying allegation 1.2 proved by the Applicant beyond reasonable doubt.

Allegation 1.2 – Dishonesty

24.5 Allegation 1.2 included an allegation of dishonesty. The Tribunal considered the dishonesty allegation, applying the two-limbed test for dishonesty set out in the decision in Twinsectra *ibid* and see paragraph 23.15 above.

24.6 By the ordinary standards of reasonable and honest people, the Respondent's conduct in failing to account for the £63,000 held pursuant to the undertaking was dishonest. The money did not belong to the Respondent and/or his Firm under the terms of the undertaking. His clients had instructed him to account to Hamlins for the money and he did not do so.

24.7 Applying the subjective test, the Tribunal found beyond reasonable doubt that the Respondent realised that his conduct in failing to account for the funds was dishonest by the ordinary standards of reasonable and honest people. The funds did not belong to him or his Firm under any interpretation of the terms of the undertaking. His clients had instructed him to account to Hamlins for the money and he did not do so. He ignored his clients' instructions. As at the date of this Tribunal hearing, the money remained untraced in spite of the existence of the High Court Judgment against the Respondent and his Firm and concerted efforts to enforce the same. The only person who had ever suggested that the money should be retained for some reason was the Respondent, and he had not provided even a glimmer of a satisfactory explanation for where the money was being held, nor had he made any attempt to return the money. Instead he permitted an application to be made to his professional indemnity insurers (albeit that that application was ultimately rejected). It was illogical for him to have permitted that application if he was still holding the money. The Tribunal drew an

adverse irresistible inference that the Respondent did not account for the funds because he no longer held them having used them for his own purposes.

24.8 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found dishonesty as alleged in respect of allegation 1.2 proved by the Applicant beyond reasonable doubt.

25. **Allegation 1.3 - Failed to comply with an Order of the High Court contrary to Rule 1.01 SCC.**

25.1 There could be no dispute that V was forced to issue proceedings against the Respondent and his Firm in the High Court. At the hearing before Master Fontaine on 15 February 2012 (at which the Respondent and his Firm were represented by Counsel) V obtained Summary Judgment for £63,000 and £5,799.45 in interest against the Firm payable in 14 days. V also obtained an Order stating that they were entitled to summary enforcement of the undertaking against the Respondent. The Respondent and the Firm were ordered to pay costs on an indemnity basis subject to detailed assessment if not agreed and to pay £20,000 on account of costs in 14 days. None of the fixed amounts have been paid by the Respondent or the Firm (which no longer exists). The Respondent sought to appeal and obtained a stay of execution on 14 March 2012. At the hearing of V's application on 19 April 2012 the Court made an Order that the stay of execution would be lifted if the Respondent and his Firm did not pay £20,000 into court within 7 days. That payment was not made and the stay of execution was lifted on 26 April 2012. On 12 July 2012 the Respondent's application for permission to appeal (which he did not attend and at which he was not represented) was dismissed with costs on an indemnity basis. V issued Statutory Demands against the Respondent and the Firm to enforce the Judgment. The Respondent was required to attend the High Court for questioning as to his means on 20 April 2012, but he did not do so. By this point the sum outstanding, including costs and interest, was £88,849.45. The Respondent attempted to resurrect the matter, which resulted in papers being referred to Lord Justice Richards on 28 January 2013 for directions on whether the Court of Appeal had jurisdiction to entertain the Respondent's application for an extension of time and permission to appeal against Master Fontaine's order. Richards LJ was satisfied that the Court of Appeal did not have jurisdiction to entertain the application. He said that the Respondent pursued the correct route when he applied to a High Court Judge for permission to appeal. The Respondent apparently remained dissatisfied as the matter went back before Lord Justice Richards on 26 April 2013. He considered the Respondent's further submissions and supporting material and documents and maintained his original conclusion. The Respondent had therefore fully exhausted all options open to him in respect of Master Fontaine's Order, which had still not been complied with. These were matters of documented fact which the Tribunal had no difficulty in finding proved.

25.2 Having found that the Respondent failed to comply with an Order of the High Court, the Tribunal considered whether this was contrary to Rule 1.01 SCC, which required the Respondent to uphold the rule of law and the proper administration of justice. This requirement included obligations not only to clients, but also to the courts. The Tribunal found beyond reasonable doubt that the failure to comply with an Order of

the High Court was contrary to the Rule 1.01 requirement to uphold the rule of law and the proper administration of justice.

25.3 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.3 proved by the Applicant beyond reasonable doubt.

26. **Allegation 1.4 – Failed to maintain properly written up books of account contrary to Rule 32(1) SAR.**

26.1 Rule 32(1) SAR made it clear that a solicitor must at all times keep accounting records properly written up to show the solicitor's dealings with client money received, held or paid by the solicitor, including client money held outside a client account under other rules which did not apply to this case. In his letter to the SRA dated 7 September 2011, the Respondent admitted that he had no ledger for R. He said "we cannot provide something which does not exist either the so called ledger (sic)". The Tribunal also noted that, in answer to a question at the time of the intervention, Mr Page recorded that the Respondent did not operate any client accounts as Morgan Walker Ltd. The undertaking was given on Morgan Walker Ltd headed notepaper and the Respondent practised as the sole director of that Firm between about November 2009 and 31 January 2012.

26.2 The Tribunal had no difficulty in finding beyond reasonable doubt that the Respondent had failed to maintain properly written up books of account contrary to Rule 32(1) SAR. The Respondent did not have any such accounting records. If the Respondent did have accounting records it would have been an easy matter for him to have produced them. There were no such records available at the time of the intervention and the Respondent did not produce any records later.

26.3 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.4 proved by the Applicant beyond reasonable doubt.

Submissions – Rule 7 Supplementary Statement – The Case of Mr G

27. Applicant's Submissions

27.1 The letter from SC to the Respondent dated 25 February 2011 (incorrectly referred to in the Rule 7 Supplementary Statement as 25 November 2011 and corrected with the consent of the Tribunal during the course of the hearing), made it clear that the sum in question was to be held to the order of SC and the purpose for the funds was to effect settlement. During the course of the proceedings against the Firm brought by Mr G to recover the money, the Respondent in his statement dated 2 November 2011 accepted that the only instructions given to him in writing were that the money was to be held to the order of RNG through his solicitors.

27.2 Rule 13 SAR, headed "Categories of money" stated that all money held or received in the course of practice fell into one or other of the following categories: "client money" - money held or received for a client … and all other money that is not office money. Office money was defined as money which belonged to the solicitor or the

practice. Putting these definitions together, this money did not belong to the Respondent, and therefore it was client money.

27.3 Rule 14(1) SAR stated that a solicitor who holds or receives client money must keep one or more client accounts. Rule 15(1) SAR stated that client money must without delay be paid into a client account, and must be held in a client account, except where the rules provide to the contrary, which they did not in this case.

27.4 The $3.5 million was client money which had to be, but was not, paid into a client account straight away because there was no client account. This was relevant to allegations 1.5 and 1.6. The SAR existed in order to protect the public, particularly clients. Further, the established uncontroversial legal principle was that a solicitor's duties in conduct were not extinguished by such matters as death or termination of retainer. In this instance the funds received were not to be held to the order of RNG deceased, but the order of SC, and it was SC that the Respondent was answerable to.

27.5 The Respondent had no right to use any of the money for his legal costs, as he put it "if all else failed". These monies were being held to the order of SC as the Respondent well knew. The contents of the Respondent's letter to the Court dated 6 September 2011 made it clear that the Respondent knew that the hearing was going ahead on 7 September 2011 in front of Holman J.

27.6 The e-mail exchange that took place between VT, the Respondent and Mr Turner QC on 9 September 2011 was crucial to the allegations of dishonesty relating to Mr G's case. The Respondent could not have been in any doubt that Holman J was considering making an Order which required the application of the funds that the Respondent was holding to the order of SC. The Respondent must have known that to be the case from the 9 September e-mail exchange.

27.7 On 9 September 2011, Holman J did indeed order the Respondent's Firm to pay the money it was holding to effect the ancillary relief settlement. The Respondent would have needed to obtain a release from SC, but that would have been given. The Respondent was not at the hearing, but he was aware that it had taken place and he had received the e-mail communications from Mr VT and Mr Turner QC, effectively informing him that the Judge wanted to know about the money and how quickly it could be processed.

27.8 The Respondent did not comply with Holman J's Order or his instructions from Mr G contained in the latter's letter dated 13 September 2011. The Respondent could not comply by virtue of what he had done with the money.

27.9 The Respondent received Holman J's order before 10:03am on 13 September 2011, according to the evidence of Mr Khaitan. The Respondent made no reference on or around that date to the conversion of the money into a rupees bank draft. At paragraph 5.3 of the Defence and Counterclaim filed by the Respondent in the civil proceedings brought against him by Mr G for recovery of the money, the Respondent admitted the transfer of the funds to the RBI by way of bank draft. The Respondent was "plainly wrong" in asserting at paragraph 7 of the same document that the Firm could not be in breach of its retainer and ceased to owe any fiduciary duties to Mr G once the retainer had been terminated. At paragraph 10, the Respondent said that the money had gone

to India, he had not got any control over it and if Mr G wanted the money he should deal with it in India. He asserted that, if the money was not obtained from the RBI, Mr G should go to court in India, when at all times the Respondent was holding the money to the order of SC.

27.10 With reference to paragraph 9 of the Affidavit dated 3 October 2011 served by the Respondent in the same litigation, if the Respondent was uncertain and under pressure as to what to do with the money, any honest solicitor would have recourse firstly to SC. If the uncertainty and pressure remained, he would apply to the Court for directions as to what to do with the funds. This solicitor converted the money to rupees and sent it to India without telling anybody.

27.11 The Respondent provided a further witness statement in the litigation dated 11 October 2011 in which, amongst other things, he gave his reasons for his actions. He said at paragraph 24 that he had no power or control over the money and that there was nothing that he or the Firm could do to "restore the position now that the draft has been issue and lodged". The Respondent did not address why he did not seek authority to deal with the funds when they were held to the order of others. When the Respondent wrote to Mr Khaitan on 27 January 2012, he stated that he had no contact details for Mr S and would not be able to provide them absent his consent. He asserted that he did not have Mr S's telephone number and denied that he or the Firm had telephoned Mr S. He asserted that Mr S had telephoned "us". The bank draft had been given to someone who the Respondent called his "associate" who he happened to be speaking to the day Mr S was travelling to Calcutta and the Respondent thought it was easier to give the draft to him than to send it by courier. He gave the draft to Mr S and then did not know where he was or how to contact him. The money was out of his control, as was the agent who he employed to remove the money from the jurisdiction.

27.12 The way in which the Applicant put its case against the Respondent was as follows:

- The Respondent received the funds in question on strict terms, to be held to the order of SC and only to be applied to effect any approved settlement of the ancillary relief proceedings between Mr and Mrs G;

- The funds were received on 5 April 2011 and the Respondent was strictly bound by the terms imposed on him by SC. He had not contradicted them in any way. If those terms were unacceptable to him, then he should have immediately returned the funds, but he did not do so;

- Having received such funds, the Respondent was obliged to retain them in a client bank account, but he and the Firm did not have such an account;

- The fiduciary duties owed by the Respondent to RNG, SC and Mr G survived both the death of RNG and the retainer with Mr G;

- The Respondent had no right to instruct BB to convert the funds into rupees and produce a draft payable to RBI. Whatever his apparent concerns about the beneficial ownership of the funds, the Respondent was holding them on strict terms;

- The Respondent had no right to allow Mr S to take possession of the draft. When he did so the Respondent lost all control of the funds. He was not in possession of the contact details of Mr S. The funds were at real risk;

- The funds were used in an attempt to make a payment of advanced tax for Morgan Walker Solicitors, Calcutta. An amount identical to the amount of the draft was drawn on BB, London main office and presented to the RBI on 29 November 2011 with the signature of the person making payment of the tax being Mr S. The draft sent to India with Mr S was the subject of that attempted payment, albeit that it was not accepted by the RBI;

- The Order made by Holman J was clear. By virtue of the e-mails sent to the Respondent on 9 September 2011, he was on notice that the funds in question were at issue at the hearing. The letter from MR to the Respondent dated 12 September 2011 confirmed the position. The Respondent had no right to instruct BB to convert the funds and issue the draft on 12 September 2011. Had he made any or any proper enquiry, the Respondent would have appreciated that in so doing he was breaching the Order of Holman J;

- At the very least the Respondent should have ensured that he had sight of and complied with the Order before he issued his instructions to BB; and

- By converting the funds and releasing the draft as he did, the Respondent was acting dishonestly by the standards of reasonable and honest people. Furthermore, he knew that he was acting dishonestly. "Uncertainty" and "pressure" did not excuse his actions.

27.13 It was not known where the money was. It was not crucial to the allegations to know what had happened to the money, although it would be helpful for the Tribunal to be able to reach a conclusion on the point if it could.

27.14 The Respondent had offered to have himself removed from the Roll of Solicitors if such was the wish of The Law Society. Mr Williams reminded the Tribunal that the SRA did not permit voluntary removal from the Roll of Solicitors when those seeking removal were subject to proceedings before the Tribunal.

27.15 Even without the allegations of dishonesty, the allegations were very serious indeed. For a solicitor to hold money subject to the order of another lawyer, or indeed anybody else and to do with it what the Respondent did went to the very heart of the solicitor's professional duties.

27.16 In answer to a question from the Chairman, Mr Williams submitted that following the death of RNG, the Respondent continued to hold the money to the order of SC. If SC had instructed the Respondent to return the money, he would have had to have done so, until the Order of Holman J was made which directed the Respondent to pay the money to Mrs G's solicitors. The Respondent should then have gone back to the Court to explain the position in relation to RNG's death and SC. The situation was complicated; however there were honest answers which were to deal properly with SC and/or go to Court. Once Holman J's order was made, the Respondent had to comply

with it unless he went to Court to get it discharged. The Respondent knew that the Judge was interested in the money because of the e-mail exchange on the day of the hearing. That provided an opportunity for the Respondent to explain his position to the Court. Between the date of death of RNG and that Order, the Respondent would have had no option but to hold the money to the order of SC.

27.17 In answer to a question from the Solicitor Member, Mr Williams confirmed that the Respondent could have transferred the money by means of bank transfer rather than banker's draft. Mr Williams made it very clear that the interrelationship between the letter from SC written on behalf of RNG instructing the Respondent to hold the monies to their order and the transfer of monies by Mr G to the Respondent with instructions that they should be used for the settlement was a matter for the Tribunal to consider during its deliberations. The amount referred to in SC's letter dated 25 February 2011 had to be the same $3.5 million referred to in Mr G's letter of instruction to USB dated 28 March 2011, albeit that SC's letter referred to a different payer. The important point was the funds and not the identity of the payer because the funds were to be held to the order of SC which was not dependent on the payer. It was a stipulation with respect to the funds. The objective of the letter from SC dated 25 February 2011 was stated to be to have the "aforesaid money" [US$3.5 million] "readily available should a settlement is (sic) achieved between the parties in the aforesaid matter." Without input from the Respondent, it was liable to remain a mystery as to why SC said that RNG would be paying the money when in fact Mr G did so.

27.18 Mr Khaitan's evidence entirely supported the evidence set out in the documents exhibited to the Rule 7 Supplementary Statement. The Tribunal now had first-hand evidence on or about the fateful time in September 2011, when there was clear knowledge that the Court was at the very least interested in these funds which the Respondent, for whatever reason, caused to be sent abroad and outside his control, according to the Respondent. The Tribunal had evidence of an attempt to use these funds to pay advance tax for an Indian firm involving family of the Respondent. That transaction was not effected and it would seem that the funds remained frozen despite the best efforts of Devonshires for the SRA and Mr Khaitan for Mr G to get the funds released. Mr G had paid the sum twice. He had paid it once to the Respondent and it had disappeared. The Tribunal had heard evidence that Mr G had sold his London home to raise the funds to pay the settlement and comply with the order of Holman J. Hopefully the money will be released some considerable time after it was paid away, but this was inevitably a matter of speculation.

27.19 These allegations were very serious even without dishonesty. Mr Williams sought an adverse inference to be drawn from the Respondent's failure to participate and for a finding of an irresistible inference that the Respondent knew that he was acting dishonestly by paying the money away when a) he was holding it to order and b) when the Court was clearly interested in having the funds applied to effect the settlement in the divorce case. The Respondent was dishonest in doing what he did without any reference to his client. The funds were client money and should have been held in client account and the Respondent had no right to wrongly pay the money away with the consequence that his own client had paid an extra £3 million to settle his divorce proceedings.

27.20 The allegation of failure to account was made on the basis that the Respondent had made no attempt to explain the whereabouts of the money. He had merely said that he did have the money, did not have it any more, did not know what had happened to it, could not control it, and could not do the impossible. That response was wholly unacceptable in terms of the fiduciary duty a solicitor owed to account to his client.

27.21 Mr Williams relied on all of the authorities referred to in relation to the matter of V.

Findings of Fact and Law - Rule 7 Supplementary Statement – The Case of Mr G

28. The Respondent was treated by the Tribunal as having denied all the facts and the 4 allegations and the 2 allegations of dishonesty in the Rule 7 Supplementary Statement. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove the facts and the allegations beyond reasonable doubt.

29. **Allegation 1.5 - Failed to maintain a client bank account contrary to Rule 14 SAR.**

29.1 The Tribunal had been provided with a Debit Advice produced on 6 April 2011 from UBS to the Firm to pay through the BB "for clients account only RE – [SNG]" for US$3.5 million. The Tribunal had also been provided with a US$ "Transactions Inquiry" document with the account name "Morgan Walker Solicitors Limited" which showed a deposit of US$3.5 million on 5 April 2011. The narration to this account referred to SNG. As far as the Tribunal was aware, this was the only bank account in the name of "Morgan Walker Solicitors Ltd" so it was inevitable that the money from UBS went to that account on the basis that UBS had been provided with that information by Mr G. In the Firm's Defence and Counterclaim to the proceedings brought against it by Mr G bearing a Statement of Truth signed by the Respondent on behalf of the Firm, the Respondent denied that $3.5 million was sent to the Firm's client account and continued "The Defendant does not maintain a client account; it however fully complies with the Solicitor Account Rules (sic)". The Tribunal accepted the Respondent's admission that the Firm did not maintain a client account. That admission was consistent with the documentary evidence. However, the Tribunal did not accept his assertion that the Firm fully complied with the SAR. At the very least it did not comply with the SAR because it did not have a client account. The Tribunal noted that the Respondent had at no time explained how the Firm's accounts complied with the SAR.

29.2 Rule 14(1) SAR stated that a solicitor who holds or receives client money must keep one or more client accounts (unless all the client money is always dealt with outside any client account in accordance with rules 9, 10, 16 or 17). Rule 9 dealt with liquidators etc, rule 10 dealt with joint accounts, rule 16 dealt with client money withheld from client account on client's instructions and rule 17 dealt with other client money withheld from a client account. The Tribunal had considered each of these rules in spite of the fact that the Respondent had not asserted that they applied to Mr G's case. The Tribunal had had no difficulty in concluding that not one of these rules applied and that no client bank account was maintained by the Respondent.

29.3 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.5 proved by the Applicant beyond reasonable doubt.

30. **Allegation 1.6 - Failed to pay client money received into a client account without delay contrary to Rule 15 SAR**

30.1 Rule 15 SAR provided that 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. There were no such applicable rules in this case. The Firm did not have a client account on the Respondent's own admission, and the Tribunal had no difficulty in finding allegation 1.6 proved on the facts and the documents by the Applicant beyond reasonable doubt.

31. **Allegation 1.7 - Wrongly paid away funds held to the order of a third party contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC. Allegation 1.7 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved.**

31.1 Rule 1.02 provided that a solicitor must act with integrity. Rule 1.04 provided that a solicitor must act in the best interests of each client. Rule 1.05 provided that a solicitor must provide a good standard of service to his clients. Rule 1.06 provided that a solicitor must not behave in a way that was likely to diminish the trust the public placed in him or the legal profession.

31.2 The Tribunal considered the evidence carefully in order to reach a decision upon the terms on which the Respondent received the sum of $3.5 million. It was conceivable on the documents that the Respondent and his Firm held the money for Mr G, from whom it was received, or for RNG through his solicitors SC who intimated in their letter dated 25 February 2011 to the Firm that their client RNG would be remitting the sum of $3.5 million to be held to SC's order. The stated objective was to have the money readily available should a settlement to be achieved between the parties in the "aforesaid matter". It was not clear what matter was being referred to. The only hint was the heading of SC's letter which appeared to relate to a dispute between RNG and Mr G and others. If the money was to be held to SC's order, matters were further complicated by the fact that RNG died during the week commencing 13 June 2011, according to the Respondent's e-mail to MR dated 21 June 2011.

31.3 The Tribunal was certain so that it was sure that $3.5 million was not sent by the Respondent to Mrs G, her solicitors MR, Mr G, RNG or SC acting on behalf of Mr RNG or solicitors acting on behalf of RNG's estate. One of the difficulties in working out for whom the money was held was the absence of proper bookkeeping by the Firm. If money had been correctly paid into a designated bank account and recorded on separate client ledgers, it would have been clear where the money had come from.

31.4 On 16 February 2011, Mr G wrote to Mrs G's solicitors MR, copied to Mrs G, stating that he and Mrs G had agreed to settle their matrimonial matters amicably and referring to a full and final settlement amount of £3.19 million which Mr G was to pay to Mrs G. Mr G stated that he would arrange for the necessary funds "hopefully

within 4 weeks". He asked MR to facilitate the settlement process by unfreezing his bank accounts. The Tribunal noted that the Respondent and his Firm did not appear to have been copied into this letter.

31.5 On 25 February 2011, SC wrote to the Firm as set out in paragraph 31.2 above. The letter made it clear that RNG had instructed SC that the Firm was to seek prior approval of the settlement terms before it could make any payment towards the settlement.

31.6 The next piece of evidence available to the Tribunal was the copy instruction dated 28 March 2011 from Mr G to UBS to transfer US$3.5 million to the account of his solicitors, Morgan Walker. Details of the BB, City Road, London account were provided with the account number referred to on the "Transactions Inquiry" document and the name of the account holder. The Tribunal noted that the words "FOR CLINTS Account only RE – S.N. [G] (sic)" had been written on the instruction in manuscript with what appeared to the Tribunal (without supporting evidence) to be the signature of Mr G underneath. The Tribunal had also seen the Debit Advice from UBS dated 6 April 2011 confirming that Mr G's instructions had been followed.

31.7 On 10 May 2011, SC wrote to solicitors called Khanna & Co in Calcutta and I. C. Sancheti & Co, Calcutta (understood by the Tribunal from the evidence of Mr Khaitan to be the Respondent's father's firm, managed by the Respondent's brother). The heading of the letter referred to proceedings by Mrs G against Mr G and others and RNG against Mr G and others and referred to RNG as SC's client. The letter enclosed a letter from RNG dated 6 May 2011 addressed to SC referring to Mr G and the settlement of legal matters with Mrs G. RNG approved the settlement and the Consent Order agreed between Mr and Mrs G. He referred to his views about the settlement. He said that if the settlement was agreed upon and approved by the English Courts, he would withdraw his claims in Calcutta, presumably under the HUF. RNG made reference to what he understood Mrs G would do when she received payment. He provided authority for SC to convey information to Mr and Mrs G's respective lawyers to give effect to his letter, and consented to circulation of a copy of his letter. The Tribunal found as a fact that RNG was by the terms of his letter dated 6 May 2011 confirming that he approved the terms of settlement between Mr and Mrs G in accordance with the final paragraph of SC's letter dated 25 February 2011, in which they referred to the requirement for the Respondent to seek prior approval of the settlement terms before making any payment. It was relatively clear from the Judgment of the Court of Appeal dated 13 August 2010 relating to the matrimonial proceedings that Mr G's assets were subject to a dispute in India with one of Mr G's brothers and other members of the immediate family. Reference was made in that Judgment at paragraph [4] to deposits in the UBS Bank in Switzerland held in Mr G's name worth £3 million to £3.5 million.

31.8 The Court of Appeal Judgment stated at paragraph [6] that Mr G had always contended in the ancillary relief proceedings that the Swiss bank accounts plus other investments were held by him on behalf of his extended family under the HUF. Mr G's brother lived in India as did other relatives. The Tribunal took this to mean that the monies held at UBS in Switzerland were considered to be part of the HUF, hence RNG's involvement in the approval of the ancillary relief settlement.

31.9 Wherever the money came from, RNG and Mr G agreed that the purpose of the money was to pay Mrs G's ancillary relief settlement. The purpose to which the money was to be put was not in any doubt. This was made clear by Holman J's Order dated 9 September 2011 (sealed by the Court on 12 September 2011) which required the Firm to pay US$3.5 million or its sterling equivalent to Mrs G's solicitors, MR, by 4pm on Friday, 30 September 2011. Paragraph 3(ii) of the Order described the funds as being held by the Firm "to the account of their client" and "on account of the said lump sum". Holman J made this Order after giving the Respondent an opportunity to provide information concerning the funds which the Respondent effectively ignored. The Judge referred in the Recital to the Order to the Debit Advice from UBS as evidence of the transfer from the account of Mr G into what the Judge described as the client account of Mr G with the Firm, and having read the e-mail from the Respondent to Mr VT and others dated 4 September 2011 which the Judge accepted as clearly evidencing that the Firm continued to hold the sum "to settle the matter". There was also clear evidence that RNG had authorised Mr and Mrs G to give effect to the settlement as set out in his letter dated 6 May 2011 sent to I.C. Sancheti & Co, Calcutta by SC. The Tribunal noted that the Firm had an associate address in Calcutta which practised from the same office address as I. C. Sancheti & Co. There was no suggestion in the letter from SC that monies could not be released to Mrs G or her solicitors subject of course to approval of the settlement by the English Courts. RNG had approved the payment to Mrs G or her solicitors before his death. That approval was given in respect of money which, setting aside the complication of the HUF about which the Tribunal had been told very little, he had not provided and which had been received by the Firm before RNG's letter of 6 May 2011 was received. Holman J approved the settlement on 9 September 2011.

31.10 If the Respondent had any genuine concerns about who the money should be paid to prior to the making of the Court Order on 9 September 2011, he had ample opportunity in which to bring his concerns to the attention of the Court. MR made a formal application to the High Court on behalf of Mrs G for Mr G to show cause why an Order should not be made in the terms of the draft consent order attached to the application on the grounds that an agreement had been reached between the parties as to substantive matters but that it had proved impossible to agree a form of Order to reflect that substantive agreement. The hearing of the ancillary relief proceedings was fixed to commence on 31 October 2011 with a time estimate of 8 days. MR's application was to be served on Mr G, care of the Firm, and was listed to be heard on 12 August 2011. However, on or about 8 August 2011, the Respondent applied for an adjournment of that hearing date on behalf of Mr G, although the Tribunal had seen no instructions from Mr G to the Respondent to the effect that that step should be taken. The result of that application was that Mr G was directed to file and serve a statement identifying any matters in issue in relation to the application for a Consent Order with a brief summary of the facts relied upon in support. The hearing was adjourned to 7 September 2011 with a clear indication that the Court would make the Consent Order if matters were agreed or determine such issues as could properly be determined. The Tribunal noted that in the statement by the Respondent filed and served in compliance with that Order, the Respondent repeated his request for an adjournment of the ancillary relief proceedings and asked for the release of funds from the State Bank of India, London to meet past and future legal costs. He also asked for a further release of funds from the same bank to make payment to the Inland Revenue. He suggested that Mr G was without funds to meet the litigation costs and

that preparations for the trial could not be undertaken in the absence of funds. The Respondent said that recent attempts to settle had "failed". Apparently on behalf of Mr G, the Respondent sought the release of £250,000 immediately to meet costs. The application was directed to be heard on 7 September 2011. The Respondent sent his e-mail dated 4 September 2011 to Mr VT, amongst others. By 6 September 2011, the Respondent had ceased to act for Mr G who was instead assisted by Mr VT.

31.11 The Respondent, as shown, was active in making applications to the Court and he had ample time between the week commencing 13 June 2011 and 9 September 2011 in which to seek guidance on what to do following RNG's death. The ideal opportunity on which to explain recent developments to the Court and to seek assistance would have been on 7 or 9 September 2011.

31.12 The Tribunal was satisfied beyond reasonable doubt that the funds came from Mr G's bank account at UBS, Switzerland into the Firm's office account. The Tribunal found as a fact that these funds properly represented client's money as defined by Rule 13 SAR in that they were funds held or received for a client. The funds certainly were not office money belonging to the Respondent or the Firm. The Tribunal found as a fact that the funds paid from Mr G's UBS account in Switzerland on his instructions were the same funds as SC had intimated were to be paid to be held to their order. The funds came from Mr G rather than RNG or via his solicitors, but were effectively the same funds to be used for the same purpose as was intimated in SC's letter. They were intended to be used solely for the purpose of effecting the settlement of the ancillary relief proceedings between Mr and Mrs G. If a settlement was not effected, they were to be held by the Respondent until he had authority to do something else with them. It may be that authority would have come from SC on behalf of RNG's estate, or from other solicitors acting for that estate, or from Mr G, or from the Court: the Tribunal did not have to decide that point. SC's letter dated 25 February 2011 made it clear that prior approval of the settlement terms must be sought before the Respondent could make any payment towards the settlement. The Tribunal had already found as a fact that RNG had approved the settlement terms in writing via his solicitors on 6 May 2011.

31.13 Whatever the circumstances in relation to the holding of the money by the Respondent's Firm, RNG and Mr and Mrs G had agreed that the money should be paid to Mrs G via her solicitors. This was set out in Holman J's Order made by consent with the approval of the Judge. Further, as stated at paragraph A of the Order, the Court had before it medical evidence confirming Mr G's capacity to consent. It was recorded that Mr G positively sought an Order in those terms. The Tribunal noted that RNG and others were parties to the Order as sealed. The Tribunal was satisfied beyond any doubt that Holman J would not have approved this Order if he had any residual concerns as to the proprieties of doing so following RNG's death.

31.14 The Respondent was aware that an ancillary relief hearing was to take place on 7 September 2011 at which the Consent Order would be considered because he wrote to the Court on 6 September 2011 referring to that hearing and stating that Mr G would be representing himself. The letter concluded by stating that the client had given specific instructions to the Respondent and the Firm could not continue in the conduct of the matter. The ancillary relief proceedings came before Holman J again on 9 September 2011 and it seemed that the medical report on Mr G was obtained on

8 September 2011. The Tribunal had not been told why there was a delay of 2 days but it may have been for the report to be prepared.

31.15 The e-mail exchange on 9 September 2011 made it crystal clear to the Respondent that Holman J was hearing the case when the first e-mail from Mr VT was sent to the Respondent. The Judge needed "immediate confirmation as to the amount of the funds held by your firm for Mr G and to have information as to the accessibility of those funds and confirmation that they can be remitted within a few days to the solicitors who act for Mrs G in part satisfaction of a settlement that has been reached". This e-mail was found by the Tribunal to have been explicit in its terms. The Judge had also indicated that he might make an Order requiring the attendance at Court of someone from the Firm in the absence of a response with the information requested. The Respondent received that e-mail as he replied to it at 14:05 the same day stating, unhelpfully as the Tribunal found, that the solicitors for Mrs G or Mr Turner, her Counsel, should contact him. This response was cavalier, bearing in mind the nature of the request from the Judge and the fact that Mr VT was assisting Mr G as the Respondent well knew. Mr Turner did e-mail the Respondent that same day, copying the Judge's clerk into the e-mail. The Tribunal found as a fact that the Respondent knew very well on 9 September 2011 that the ancillary relief proceedings were about to be settled and that the funds in question were required to effect that settlement.

31.16 On 12 September 2011 at 20:49 the Respondent was sent a copy of the unsealed Order by MR, Mrs G's solicitors. MR referred to an e-mail sent by the Respondent to James Turner QC on Monday, 12 September 2011 timed at 09:18 (English time). In the final paragraph of that e-mail, MR recorded that the Respondent said that he did not hold any funds on behalf of his "former client" Mr G. It was on the same day, 12 September 2011, that the Respondent instructed the BB, London by fax to convert the funds of US$3,510,528.19 into rupees at the best available rate and issue a bank draft in the name of the RBI for the entirety of the said sum immediately and minimising all charges. The Tribunal had been provided with the Respondent's letter of instruction to the Bank written on the Firm's headed notepaper endorsed with the London address. The Respondent acknowledged the e-mail from MR on 13 September 2011 at 10:03, confirming receipt of the e-mail and sealed Order that morning. The Respondent said "let me examine the contents with reference to our files and I would request you to provide the solicitors notes and a copy of the judgement referred in your letter. The response may take some time and is dependent on your providing me the sought information (sic)." The Respondent did not volunteer to MR the information that he had already instructed BB in City Road, London to convert the funds to rupees. There followed a letter from the Bank dated 27 September 2011 again addressed to the Respondent at the Firm's London address referring to the instruction by fax of 12 September 2011 and confirming that the instructions had been carried out, the suggestion being that the sum was converted on 14 September 2011 (although the banker's draft was dated 12 September 2011) and a Demand Draft payable to RBI issued for 164,819,300,00 rupees. That letter appeared to have been written in response to an enquiry from the Respondent, as the final words read "Hope this clarifies your enquiry".

31.17 The evidence from Mr Khaitan was that, even if Mr S received the banker's draft on the night of 12 September 2011 and flew with it to India that night, he would not have

been able to bank it by 10:03am on 13 September 2011, being the time at which the Respondent claimed to have seen Holman J's Order for the first time.

31.18 The Tribunal was satisfied beyond all reasonable doubt that the Respondent wrongly paid away the funds held to the order of a third party by failing to pay the funds to MR on behalf of Mrs G in compliance with Holman J's Court Order dated 9 September 2011 and by converting those same funds to rupees and removing them from the Court's jurisdiction. The Respondent accomplished this by handing the draft to an "associate" for whom he alleged that he had no contact details, not even a telephone number. As a result the Respondent by his own admission lost control of the funds. The Tribunal had reached this conclusion after considering all the events outlined above, including the background to the settlement of which the Respondent was well aware, the e-mails sent to him on 9 September 2011 which gave him ample opportunity to respond to the Court if he had any concerns, and the fact as found by the Tribunal that he knew that an Order in respect of the funds was to be made imminently. The Tribunal could not be sure that the Respondent converted the US dollars into rupees in the form of a banker's draft before receipt of Holman J's Order, but the Tribunal was satisfied beyond reasonable doubt that the Respondent knew that an Order in respect of the settlement of the ancillary relief proceedings along the lines of the draft order involving these funds was in the process of being made on 9 September 2011.

31.19 The implications of the conversion of the funds into rupees followed by the issue of a banker's draft in the name of RBI were that the funds passed out of the jurisdiction in which the Order of Holman J had been made and were at the very least not easily accessible for the purpose of compliance with that Order. The Tribunal had no doubt that those actions were the responsibility of the Respondent as the letter of instruction to the BB dated 12 September 2011 was signed by him. The Tribunal was not aware that the Respondent had ever denied issuing the instruction.

31.20 The Respondent had provided various explanations for his conduct. He had suggested that he was acting under "uncertainty and pressure" but that did not explain why he had taken steps on 12 September 2011 to make the conversion and, on his own case, give the rupees banker's draft to an associate who happened to be at his office and happened to be flying to Calcutta that night (but for whom he had no contact details) to take to Calcutta. The Respondent made no effort to seek instructions or guidance from Mr G, MR, SC, or the High Court before taking this action. It was also a puzzle as to why the Respondent had chosen to convert the funds by means of banker's draft rather than a faster electronic bank transfer, save that an electronic bank transfer could be more easily reversed.

31.21 The Respondent had suggested at various times that he was concerned about Indian tax implications and needed to get the money back to India, quickly by implication. Mr Khaitan's evidence was that there was no connection between Mr G, the money and India. The Respondent had been in receipt of the funds since 5 April 2011 and had done nothing to address his alleged concerns in the intervening period or to make enquiries about how those concerns might be managed. The Tribunal found as a fact that the Respondent was prompted into activity once he became aware that Holman J was about to make an Order in respect of the funds. Only 3 days before the Holman J hearing, the Respondent was sufficiently confident about the legality of the money to

be telling Mr VT, with a request that his e-mail dated 4 September 2011 be shown to Mr G, that if there was not enough interest on the money, he intended to take some of it for costs anyway. The Respondent had not produced a shred of evidence to suggest that there was any issue about the legality of the funds insofar as the Indian Courts or tax authorities were concerned.

31.22 The Tribunal found that the professional duties owed by the Respondent did not cease to apply upon events such as death or actual or purported termination of retainer. It would make no sense for a solicitor to be able to behave as he wished merely because his client had died or had dispensed with his services. In such circumstances the professional duties owed by the Respondent took on even greater importance, and any actions which could be perceived to be contrary to those professional duties had to be taken with the utmost of caution, ideally with the consent of the Court.

31.23 The Tribunal did not know what had happened to the funds paid away and did not need to know for the purpose of finding allegation 1.7 proved.

31.24 The Tribunal found beyond reasonable doubt that the Respondent wrongly paid away funds held to the order of a third party. In doing so the Respondent acted contrary to Rule 1.02, which required him to act with integrity as defined in the decision in Bolton *ibid*. The Respondent also acted contrary to Rule 1.04 in that he acted far from in the best interests of his client Mr G. It was difficult to imagine a case where the client's interests were less well served. It followed from this finding that the Respondent did not provide a good standard of service to Mr G contrary to Rule 1.05. The Respondent had also behaved in a way that was entirely likely to diminish the trust the public placed in him and indeed providers of legal services as a whole, contrary to Rule 1.06. Members of the public would no doubt be horrified to read that a solicitor had behaved as the Respondent had done when dealing with a client who was in the later years of his life. The Tribunal was mindful of the requirement of solicitors as expressed in Bolton that they should discharge their professional duties with integrity, probity and complete trustworthiness. There was also a need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. The reputation of the solicitors' profession was one in which every member, of whatever standing, may be, in the words of Sir Thomas Bingham MR as he then was "trusted to the ends of the earth".

31.25 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found the underlying allegation 1.7 proved by the Applicant beyond reasonable doubt.

Allegation 1.7 – Dishonesty

31.26 Allegation 1.7 included an allegation of dishonesty. The Tribunal considered the dishonesty allegation, applying the two-limbed test for dishonesty set out in the decision in Twinsectra *ibid* and see paragraph 23.15 above.

31.27 There was one person alone who should have received these funds by virtue of what Mr G, RNG, Mrs G, her solicitors MR and the Court wanted; that person was Mrs G. Mrs G did not receive the money, which was converted into rupees in the form of a

banker's draft and apparently transported to India on the instruction and at the direction of the Respondent and no other person, in the certain knowledge as the Tribunal had found that the Order in respect of the settlement of the ancillary relief proceedings was about to be made. The Tribunal had heard from Mr Khaitan that transferring large sums of money by banker's draft rather than bank transfer was unusual in his experience (albeit not as an expert in Indian or banking law). A benefit of using a banker's draft was that it was non-returnable and effectively cleared funds, whilst a bank transfer could be easily reversed. The Respondent on his own case gave the draft to a person (whose contact details he later said he did not have) who was flying out to India, with instructions to pay the banker's draft into the RBI.

31.28 The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct in wrongly paying away the funds had been dishonest by the ordinary standards of reasonable and honest people. The objective limb of the Twinsectra test was therefore satisfied. The Tribunal was also satisfied beyond reasonable doubt that the Respondent himself realised that by those standards his conduct was dishonest. His efforts on 12 September 2011 in converting the US dollars into a rupees banker's draft without seeking authority, and ensuring that the draft was taken to India to be deposited at the RBI on the same day when he was aware that Holman J had in all probability made an Order in the ancillary relief proceedings on 9 September 2011 providing for the payment of the funds to Mrs G's solicitors spoke volumes about the Respondent's state of mind at the time. A reasonable and honest solicitor would have cooperated with Holman J's questions concerning the funds or raised his concerns about the funds with Holman J, either in his letter to the court on 6 September 2011 or by means of attending court in his own capacity to protect the interests of his Firm and himself on 9 September 2011. At the very least a reasonable and honest solicitor would have contacted Mrs G's solicitors, SC or even Mr G on 12 September 2011 to inform them of his intentions and the reasoning behind his intentions so that they could make informed decisions and respond to the Respondent before irreversible actions were taken by him.

31.29 The Tribunal noted that on 29 November 2011 there was an attempt by someone purporting to be Mr S to pay an amount equivalent to the entirety of the amount of the banker's draft into the RBI, Calcutta, to pay advance income tax for a company called Morgan Walker Solicitors, Calcutta with an address at 12 Old Post Office Street, the same postal address as that of the firm of I. C. Sancheti & Co, and the Respondent's postal address for the purpose of these Tribunal proceedings. The RBI declined to accept the banker's draft, having been made aware of the Order of Lloyd Jones J. It was not necessary for the Tribunal to make any finding in respect of this attempt. Mr G's current solicitors were using their best endeavours to recover the banker's draft from the Bank of Baroda where it apparently remains.

31.30 Even if the Tribunal had not made a finding of dishonesty in respect of this allegation, the Respondent had been prepared to say in evidence during proceedings relating to recovery of the funds that he did not have control over the money and that he could not do the impossible. If the Respondent's case was correct on that point (and the Tribunal had rejected this attempt at an explanation) the facts as asserted by the Respondent fell within Weston v Law Society *ibid* where The Lord Chief Justice (as he then was), Lord Bingham of Cornhill made clear that it was the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it.

Solicitors were under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance of the rules in relation to the holding of client money.

31.31 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found dishonesty as alleged in respect of allegation 1.7 proved by the Applicant beyond reasonable doubt.

32. **Allegation 1.10 - Failed to properly account to third parties and to clients for funds received by him from those parties contrary to Rules 1.05 and 1.06 SCC. Allegation 1.10 is an allegation of dishonesty. However dishonesty is not an essential ingredient for the allegation as pleaded to be proved.**

32.1 Holman J asked the Respondent to account for the funds on 9 September 2011 which he failed to do. On 12 and 13 September 2011, MR asked the Respondent to account for the funds in compliance with Holman J's Order. He failed to do so. The Respondent's former client Mr G required him to account for the funds in his letter dated 13 September 2011 with which he provided a copy of the sealed Order of Holman J and instructed the Respondent to transfer $3.5 million to MR's client account, providing those client account details. The Respondent did not respond to that instruction, which Mr G repeated by letter dated 22 September 2011, in which he required confirmation by return that the funds had been remitted with an indication that if there was no reply there would be consequences. The Respondent did not reply.

32.2 The Tribunal noted that the Respondent wrote to Mr S with a copy of Lloyd Jones J's Order dated 11 October 2011, referring to an earlier communication with Mr S that the latter had deposited the banker's draft at the RBI and received a token (a receipt) in return. The Respondent asked Mr S to return the token to Morgan Walker Solicitors by means of attendance at the offices of I. C. Sancheti & Co in Calcutta immediately. It was therefore evident that, as at 12 October 2011, the Respondent did have contact details for Mr S. It was not known by the Tribunal whether the token was ever produced.

32.3 The Tribunal found as a fact that the Respondent had failed to properly account to third parties and to clients for funds received by him. The Tribunal also found that his failure was contrary to Rule 1.05 in that he had failed to provide a good service to his client Mr G and Rule 1.06 in that he had behaved in a way that was likely to diminish the trust the public placed in him and the legal profession.

32.4 Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found the underlying allegation 1.10 proved by the Applicant beyond reasonable doubt.

Allegation 1.10 – Dishonesty

32.5 Allegation 1.10 included an allegation of dishonesty. The Tribunal considered the dishonesty allegation, applying the two-limbed test for dishonesty set out in the decision in Twinsectra *ibid* and see paragraph 23.15 above.

32.6 The Tribunal had concluded beyond reasonable doubt that the failure to properly account was dishonest by the ordinary standards of reasonable and honest people. The

Respondent was asked by Mr VT on behalf of the Judge, as confirmed by Mr Turner QC, whether he had the money and whether it was easily accessible. The Respondent's reply to Mr VT's e-mail was to say effectively that MR or Mr Turner could contact him. When Mr Turner did contact him that same day, the Respondent was out of e-mail communication and did not reply until the morning of 12 September 2011 when he prevaricated rather than providing the information sought even at that late stage. Reasonable and honest people would consider the Respondent's conduct in failing to account for funds received by him to be dishonest.

32.7 The starting point when considering the subjective test was to look at the Respondent's e-mail dated 4 September 2011 to Mr VT. In that e-mail, the Respondent made it clear that he had US$3.5 million that did not fetch enough interest to meet the litigation costs but that he would use that money to meet the costs if all else failed. The Respondent was in effect informing Mr VT at the stage where the solicitor/client relationship with Mr G was on the verge of collapse that he had the funds and that he intended to use them for litigation costs. He wanted Mr G to be told this because he specifically asked for his e-mail to be shown to Mr G. In his affidavit sworn on 19 December 2011 in the proceedings for recovery of the money, the Respondent stated that Mr S had lodged the draft with the RBI and the draft had been lodged again at the High Court at Calcutta with the request that the Commissioner of Income Tax and the Enforcement Department of RBI should take steps to seize the draft and funds represented in the instrument in respect of money taken out of India in breach of Indian laws and foreign exchange regulation by way of money-laundering. The Respondent suggested that the value of the bank draft was "proceeds of crime" under Indian law and that the subject was *sub judice* in the Calcutta High Court as "he had been led to understand". This contrasted with the evidence of Mr Khaitan which was that the RBI had sent the draft back to Morgan Walker Solicitors, Calcutta. In a letter to Mr Khaitan dated 27 January 2012, the Respondent said that he had no contact details for Mr S and would not be able to provide them without Mr S's consent even if he did have details. Mr Khaitan's firm was incorrect in their assertion that he had Mr S's telephone number or that he telephoned Mr S, who had in fact telephoned the Respondent. The Tribunal did not find any of these explanations and excuses to be plausible. Mr Khaitan wrote to the Respondent on 3 February 2012 repeating what had been said in a letter dated 23 December 2011, and setting out 4 specific questions in relation to the draft which he said the Respondent had failed to answer. Those questions included where the draft was before it was lodged with the High Court of Calcutta and a request that the Respondent identify his sources of information. The Respondent did not reply until such time as a penal notice was attached to the Order of the Court dated 15 December 2011 requiring him to answer the same questions referred to by Mr Khaitan. On 16 February 2012 he wrote to Mr Khaitan's firm stating that he was in India as they were aware and that he did not live in London any more and would not be able to attend for cross-examination as he was resident in India.

32.8 When Mr G's proceedings against the Firm came before His Honour Judge Seymour QC on 22 February 2012, the Judge stated that when the matter had previously come before him in December 2011 the position appeared to be that, contrary to what the Respondent had asserted before Lloyd Jones J on 11 October 2011, the banker's draft had not been presented to the RBI before the hearing before Lloyd Jones J by Mr S, but in fact was presented by somebody acting on behalf of the Firm, or an Indian firm

with the same name based in Calcutta, seeking to have the amount of the banker's draft credited to the income tax account, it appeared, of Morgan Walker Solicitors with the RBI. The Judge noted that the terms of the Order made on 14 December 2011 seemed to be tolerably clear but that the Respondent seemed to take a different view. He noted that neither the Respondent nor his Firm had made any application to vary the Order of 14 December 2011, and he remarked that it was surprising to find that a person who was apparently a Solicitor of the Senior Court sought to assert that he was relieved from complying with a Court Order on the ground that compliance was "disproportionate". Seymour J noted that this showed a lack of respect to the Court which "plainly amounted to contempt". He further noted that the Respondent had by his conduct demonstrated an inclination to play "fast and loose" with the Court. The Judge made it clear that the Respondent must attend for examination on 2 March 2012 and the Order was endorsed with a penal notice. The Respondent did not comply with the penal notice and did not attend for examination on 2 March 2012 or at all.

32.9 The Respondent knew that he was subject to a Court Order to pay the funds to MR and that he was required to account to Mr G's new solicitors. This knowledge continued. The Tribunal was satisfied beyond reasonable doubt that the Respondent realised that his conduct in failing to account for the funds throughout the period in question was dishonest by the ordinary standards of reasonable and honest people. It was accurate to say that he had played fast and loose with the Court. He had embarked on a frolic of his own and did all he could to avoid the consequences of that frolic.

32.10 It was unnecessary for the Tribunal to consider whether the Respondent intended permanently to deprive third parties and clients of the funds in question in order to establish dishonesty – see Bultitude v The Law Society *ibid*.

32.11 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found dishonesty as alleged in respect of allegation 1.10 proved by the Applicant beyond reasonable doubt.

Submissions – Rule 7 Supplementary Statement – The Case of H

33. Applicant's Submissions

33.1 There were no allegations of dishonesty in respect of this matter.

33.2 The Respondent and his Firm had wholly failed to account to H for the settlement monies received. The funds should have been held in a client bank account, but the Respondent and the Firm did not operate such an account. The witness statement of Akiwande Akiwumi had been read by the Tribunal and it was a matter for the Tribunal to decide the weight to be given to it. The documentary evidence was clear and the witness statement was entirely consistent with it. The Applicant took issue with the Respondent's e-mail to the SRA dated 30 January 2012. It was wrong to say that the Respondent could do very little in the circumstances: what he could have done was to repay the money. The Respondent sent a further e-mail on 31 January 2012 timed at 10:07, which constituted his last and wholly inadequate word in relation to this particular matter. Once again money had been sent to the Firm which was

properly categorised as client money, which should have been held in a client account under the SAR, but there was no such client account. There was a complete failure to account for the sums which the Respondent simply tried to deflect on to others who had worked for him. However, he was responsible for his clients' money and was the sole director of the Firm.

33.3 In answer to a question from the Lay Member, Mr Williams said that allegations 1.5 and 1.6 in relation to H applied when the sum of money paid by H reached the Firm's bank account. The alleged failure to properly apply funds received to effect the settlement of a civil dispute at allegation 1.8 also arose once the money was received by the Firm because that was the purpose for which the funds were sent. It was perfectly usual for a client to transmit settlement funds through solicitors rather than payment to the other party direct. There was evidence of a settlement in that sum and evidence of the money being sent to the Firm, but no document from H instructing the Respondent "here is the money, settle the dispute". Allegations 1.5, 1.6 and 1.8 bit when the money reached the Firm's bank account. Allegation 1.10 related to the Respondent's own failure to explain where the money was or send it back to his clients.

33.4 The Chairman noted that if, as suggested by Mr Akiwumi in his Statement, the plan had been for H to pay the settlement direct to OA, the Respondent may have thought the same. As he did not have individual client accounts, it might be difficult for him to pick up on that fact. Mr Williams said that would be utilising the Respondent's own failure to comply with the SAR, which the Chairman accepted. He noted however that the sum of money involved was relatively small, and that if it went in to one account and was not ascribed to a particular client it was possible that its receipt would not be picked up, which Mr Williams accepted. The Chairman was keen to flag up this point, particularly in view of the fact that the Respondent was not present at the hearing. Mr Williams said that if the Tribunal was inclined to accept that this was a reasonably chaotic accounting system, he would have to accept that, but he still submitted that, having received these monies, the Respondent had to pay them into a client account and account for them. The question was "did he fail to effect settlement?" and could the Applicant prove that he was instructed to use that money for that purpose. There was no file of papers, but the Tribunal could draw inferences.

33.5 The Applicant's case was that when the funds from H arrived with the Respondent, being client money a duty immediately arose to apply those funds only for their proper purpose. If the Tribunal was against Mr Williams on that, and wished to see evidence of knowledge on the part of the Respondent, then there was no evidence of that. If the Tribunal considered that lack of evidence defeated allegation 1.8, it seriously aggravated allegation 1.6, the alleged breach of Rule 15 SAR. The Respondent would otherwise be able to take advantage of his own chaotic accounts. Mr Williams accepted that if the Respondent expected the money to be paid direct by H to OA, as a result of the accounts chaos, it would be more difficult for the Respondent to identify receipt of the money into his account from H. However, any solicitor running his accounts properly would be able to identify the unexpected receipt of client money. The Applicant did not have evidence of when the Respondent was put on notice that the money from H had arrived in his account and that was not the basis upon which the Applicant put its case. What the Applicant had evidence of was receipt of a sum of money which equated to the amount of the settlement.

Findings of Fact and Law - Rule 7 Supplementary Statement – The Case of H

34. The Respondent was treated by the Tribunal as having denied all the facts and the 4 allegations in the Rule 7 Supplementary Statement. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove the facts and the allegations beyond reasonable doubt.

35. **Allegation 1.5 - Failed to maintain a client bank account contrary to Rule 14 SAR**

35.1 The Tribunal had already found as a fact that the Respondent did not maintain a client bank account, which was contrary to Rule 14 SAR. The failure to maintain a client account contributed to the difficulty encountered by others when trying to trace funds. Taking all of the above findings of fact into account, and on the documents, the Tribunal found allegation 1.5 proved by the Applicant beyond reasonable doubt.

36. **Allegation 1.6 - Failed to pay client money received into a client account without delay contrary to Rule 15 SAR**

36.1 The Respondent did not have a client account in to which to pay client money. The Tribunal found as a fact that the funds received from H were client money. Failure to pay client money into a client account made it difficult to identify when money was received and for what purpose, which the Tribunal found to be an aggravating feature when considering the events that occurred in H's case. Taking all of the above findings of fact into account and on the documents, the Tribunal found alleged 1.6 proved by the Applicant beyond reasonable doubt.

37. **Allegation 1.8 - Failed to properly apply funds received from a client to effect the settlement of a civil dispute contrary to Rules 1.02, 1.04, 1.05, and 1.06 SCC**

37.1 It had been established that the Respondent did not have a client bank account. The Tribunal had concluded from a careful analysis of the documents and the witness statement from Mr Akiwumi (which had been read) that there was at least the possibility of an impression that OA were to be paid the agreed settlement sum direct by H. This impression was reinforced by the contents of the report made on behalf of H by Mr Akiwumi to the SRA where reference was made to the fact that, unknown to H's legal team, H's Accounts Payable department had paid the settlement amount to the Firm. On 12 September 2011, it came to H's attention that settlement had not been received by OA when the court bailiffs arrived at H's door.

37.2 There was no doubt that a sum of money equivalent to the agreed settlement amount of £4,284.63 came into the Firm's account. H's bank statement recorded the fact of a payment of £4,284.63 to the Firm, albeit next to an invoice number. The Tribunal had not been referred to the invoice itself. The Respondent's reply by e-mail on 30 January 2012 to the SRA's enquiries stated that "it was not understood which sums had not been accounted for". Reference was made to issue of an invoice. The Respondent's approach was that the matter was in the past and the Firm was closed, so there was little that could be done in the circumstances.

37.3 The Applicant's case was put on the basis that this allegation "bit" at the point at which the money was paid by H into the Firm's account. The Tribunal considered that it was possible that the Respondent also expected the settlement funds to be paid direct by H to OA and was not "looking out" for the funds coming into the Firm's account. This would be symptomatic of the haphazard approach to stewardship of client money which characterised the Respondent's dealings in the matters before the Tribunal. The Tribunal noted Mr Williams' submission that finding this allegation not proved would effectively permit the Respondent to benefit from his own shortcomings in not ensuring that his Firm maintained a client account. If the allegation had been pleaded in a slightly different way, or if there had been evidence that the Respondent knew that H was to pay the settlement funds to his Firm for onward transmission to OA, the Tribunal might have reached a different conclusion. However, in all the circumstances, the Tribunal did have doubt based on the possibility that the Respondent expected H to pay OA direct and did not know that the settlement funds had come into the Firm's account until he was contacted by H to say that the bailiffs had arrived. At that point the Respondent did fail to properly apply the funds, which had not been recovered, but that was not the way the case had been put by the Applicant.

37.4 Taking all of the above findings of fact into account, and on the documents, the Tribunal found allegation 1.8 not proved by the Applicant beyond reasonable doubt.

38. **Allegation 1.10 - Failed to properly account to third parties and to clients for funds received by him from those parties contrary to Rules 1.05 and 1.06 SCC**

38.1 The Tribunal found that the Respondent did fail to properly account to H and OA for funds received by him from H. He did not either pay the funds to OA once he became aware that they were in his Firm's account or return the money to H. This was contrary to Rule 1.05 (provision of a good standard of service to his clients) and Rule 1.06 (behaving in a way that was likely to diminish the trust the public placed in him and the legal profession). The Respondent did his client H a disservice in failing to properly account for the funds. The money had not been recovered and H had effectively paid the settlement sum twice plus costs and interest. There was potential for damage to its commercial reputation caused by the Court Judgment for an agreed settlement and the arrival of the bailiffs. A member of the public would expect a solicitor to account for funds received in these circumstances. The Respondent had done nothing to put matters right.

38.2 It was convenient at this point to mention the weight given by the Tribunal to Mr Akiwumi's witness statement which the Tribunal had read. The Tribunal found that the witness statement added little to the documentary evidence. The matter of H was dealt with by the Respondent (according to Mr Akiwumi) in a way that was consistent with the documentary evidence before the Tribunal. Further, the way that the Respondent dealt with H's case was entirely consistent with the way in which he dealt with the cases of Mr G and AHL.

38.3 Taking all of the above findings of fact and law into account, and on the documents, the Tribunal found allegation 1.10 proved by the Applicant beyond reasonable doubt.

Submissions – Rule 7 Supplementary Statement – The Case of AHL

39. Applicant's Submissions

39.1 There were no allegations of dishonesty in respect of this matter. However the allegations were particularly serious.

39.2 The sum paid by AHL to the Firm on account of Stamp Duty represented client monies which were required to be held in a client bank account. The Firm did not operate a client account. The fact that the Morgan Walker LLP was in liquidation as at 8 December 2011 was irrelevant because the Stamp Duty should have been paid to HMRC by no later than 23 February 2011. Joint Liquidators were not appointed until 29 March 2011, some 35 days after the Stamp Duty liability should have been paid. A large amount of clients' money had not been paid into a client account, had not been used for its proper purpose and had not been returned. Mr Williams urged the Tribunal to accept Ms Farthing's evidence in each and every respect.

Findings of Fact and Law - Rule 7 Supplementary Statement – The Case of AHL

40. The Respondent was treated by the Tribunal as having denied all the facts and the 4 allegations in the Rule 7 Supplementary Statement. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Applicant was required to prove the facts and the allegations beyond reasonable doubt.

41. **Allegation 1.5 - Failed to maintain a client bank account contrary to Rule 14 SAR**

41.1 The Tribunal had already found as a fact that the Respondent did not maintain a client bank account, which was contrary to Rule 14 SAR. The failure to maintain a client account contributed to the difficulty encountered by others when trying to trace funds. Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.5 proved by the Applicant beyond reasonable doubt.

42. **Allegation 1.6 - Failed to pay client money received into a client account without delay contrary to Rule 15 SAR**

42.1 The Respondent did not have a client account in to which to pay client money. The Tribunal found as a fact that the funds received from AHL were client money. Taking all of the above findings of fact into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.6 proved by the Applicant beyond reasonable doubt.

43. **Allegation 1.9 - Failed to discharge a liability for Stamp Duty having received funds from a client for that express purpose contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC.**

43.1 This allegation could be taken relatively briefly which was not to diminish its seriousness. The Respondent asked his clients AHL for £135,080 to pay Stamp Duty in respect of the purchases of two properties. It later became apparent that the Stamp Duty had been incorrectly calculated but that mattered not for the purpose of the Tribunal's decision. The clients AHL paid the Stamp Duty to the Firm on 4 January 2011 with the balance of the completion monies stated to be in total £2,847,887.30 (which equated to the payment by AHL of US$4,439,960.01). The Tribunal found as a fact that this was client money to be used for an express purpose of which the Respondent was well aware as he had requested the money in accordance with the Completion Statement. The purchases were completed on 24 January 2011. The Stamp Duty was required to be paid within 30 days of completion i.e. by 23 February 2011. It was not paid within that time or at all. AHL instructed LG to make a recovery on its behalf, and the Tribunal heard impressive and clear oral evidence from Ms Farthing from LG. She said, and the Tribunal accepted, that AHL had to pay the Stamp Duty again, plus interest and a late payment fee in order to comply with law and secure registration of the properties in their names. A claim had been made against the Compensation Fund in respect of the monies which were effectively paid by AHL twice. The Respondent had never explained his conduct, and the money remained untraced.

43.2 The Tribunal found allegation 1.9 in respect of the failure to discharge Stamp Duty having received funds from a client for that express purpose proved beyond reasonable doubt. Further, the Tribunal found beyond reasonable doubt that the Respondent had acted in those circumstances contrary to SCC Rules 1.02 (he had not acted with integrity), 1.04 (he had not acted in the best interests of clients AHL), 1.05 (he had not provided a good standard of service to AHL) and 1.06 (he had behaved in a way that was likely to diminish the trust the public placed in him and the legal profession). The Stamp Duty should have been paid before the Firm went into liquidation. If the money had been properly held in a client account it would have been present at the time of the intervention, which it was not. The Respondent had acted in a way that was inconsistent with the high standards of integrity and trustworthiness required of solicitors as stated in Bolton *ibid.*

43.3 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.9 proved by the Applicant beyond reasonable doubt.

44. **Allegation 1.10 - Failed to properly account to third parties and to clients for funds received by him from those parties contrary to Rules 1.05 and 1.06 SCC.**

44.1 The Tribunal found that the Respondent did fail to properly account to AHL for funds received by him. He did not pay the funds, which were client monies provided for the payment of Stamp Duty liabilities and for no other purpose, to HMRC or return the money to AHL if for some reason he could not pay the Stamp Duty. This was contrary to Rule 1.05 (provision of a good standard of service to his clients) and Rule 1.06 (behaving in a way that was likely to diminish the trust the public placed in him and the legal profession). The Respondent did his client AHL a disservice in failing to properly account for the funds. The money had not been recovered and AHL had effectively paid the substantial sum twice plus interest and a late payment fee. There was potential for damage to AHL's commercial reputation. A member of the public

would expect a solicitor to account for client monies received in these circumstances. The Respondent had done nothing to put matters right, having abdicated all responsibility on the basis that the Firm had gone into liquidation although this event occurred after the Stamp Duty should have been paid. AHL had made a claim on the Compensation Fund, although Ms Farthing's evidence was that reimbursement of its costs was outstanding.

44.2 Taking all of the above findings of fact and law into account, and on the documents and the written and oral evidence, the Tribunal found allegation 1.10 proved by the Applicant beyond reasonable doubt.

Previous Disciplinary Matters

45. None.

Mitigation

46. There was no mitigation by or on behalf of the Respondent.

Sanction

47. The Tribunal referred to its Guidance Note on Sanctions (September 2013) when considering the proportionate and appropriate sanction. The Tribunal had taken all the submissions and written evidence into account when reaching its final decision.

47.1 The Respondent had denied all 10 allegations and 4 allegations of dishonesty of which the Tribunal had found 9 allegations proved beyond reasonable doubt, including all 4 allegations of dishonesty.

47.2 In deciding what sanction to impose, the Tribunal must have regard to proportionality. The most serious conduct involved dishonesty whether or not it led to criminal proceedings and penalties. Four allegations of dishonesty had been found proved, intimating that the sanction imposed by the Tribunal would almost invariably be striking the Respondent's name off the Roll of Solicitors, save in exceptional circumstances which were rare. The Tribunal was well aware of the full range of sanctions open to it, but in view of the proved dishonesty allegations, the Tribunal started from the premise that the appropriate and proportionate sanction for the protection of the public and the maintenance of public confidence in the reputation of legal services providers was striking off.

47.3 The Tribunal assessed the seriousness of the misconduct when considering sanction. It looked at the level of the Respondent's culpability. The Respondent took every conceivable step to evade paying over client funds in the cases under analysis, including making attempts to cover his tracks, which appeared to have been successful, for example in respect of V's £63,000. He had ignored Court Orders, including those endorsed with penal notices (only necessary because of his refusal to engage with the judicial process). The misconduct resulted from the Respondent's own actions. There was no evidence of anyone having placed any pressure on him or exerted influence to encourage him to take steps that he had taken. On the face of it, the Respondent had received financial gain from his misconduct, if only to shore up

his Firm until it went into liquidation. The Respondent was an experienced solicitor, working in more than one jurisdiction and was obviously a man of considerable intelligence. His actions appeared to have been carefully planned and could not be described as spontaneous, even though some steps were taken over a very short period of time. The Respondent had acted in breach of his clients' trust and confidence, and in breach of the trust and confidence of third parties.

47.4 The level of harm caused by the Respondent's actions was assessed by the Tribunal to be considerable. For example, in the commercial deal between R and V, companies who seemed before the transaction to have an amicable commercial arrangement ended up falling out with each other badly, with a Statutory Demand being issued by V against R solely because the Respondent ignored the instructions from R and failed to hand over the retained consideration of £63,000 held under the undertaking (solemn promise) that he had given to Hamlins. The Respondent's actions also caused V's relationship with their solicitors to become strained when they had done nothing wrong. It was entirely reasonable for Hamlins to rely on the undertaking from a solicitor. This was the first of several examples where such consequences had resulted from the Respondent's actions.

47.5 Mr G's case was a particularly grave example of harm caused. Mr and Mrs G had been involved in very difficult and stressful ancillary relief proceedings late in life and after a long marriage. Mr G ended up working with Mrs G's solicitors to bring about the desired substantial settlement incurring large amounts in costs. At a critical point, the Respondent, whom it appeared to the Tribunal, had been repeatedly seeking to delay the substantive Hearing (a characteristic which he adopted elsewhere and in the proceedings before the Tribunal), converted from dollars to rupees by means of banker's draft the settlement funds he had received to satisfy the anticipated Ancillary Relief Order. The same day he moved the banker's draft out of the Court's jurisdiction and his and Mr G's control, so that the funds were effectively unusable for the purpose for which they had been intended. Mr G was left with an Order of the High Court with which he had to comply within tight deadlines with the result that he had to sell his own home in London. Both Mr and Mrs G were at a stage of their lives when they should have been able to move on as quickly as possible after the ancillary relief proceedings had been concluded. Due to the Respondent's actions they remained involved in litigation for some time. Mr G continues to try to recover his money having paid the divorce settlement in effect on a second occasion.

47.6 In H's case, they were subject to bailiffs unexpectedly arriving at their offices to recover funds to pay the settlement agreed and due to OA. H's credit rating might well have been affected and their commercial reputation damaged. The only factor which made the case of H less serious than those of V and Mr G was the amount of money involved and the absence of dishonesty allegations.

47.7 In the case of AHL, the failure to pay Stamp Duty by the due date and the disappearance of over £130,000 left AHL with no protection at HM Land Registry in respect of the expensive properties they had purchased for many months after completion.

47.8 In every allegation where the Tribunal had made a finding under Rule 1.06 SCC, the Tribunal had effectively found that there had been damage to the public confidence in

providers of legal services in general and solicitors in particular. The Tribunal considered that this Respondent's actions throughout had contributed to a negative effect on public confidence and the trust and confidence of his own clients in those providing legal services. The confidence of other solicitors would also be shaken when reading about these events, as evidenced by the solicitors who gave evidence before the Tribunal. Mr Oliver stated that a solicitor's undertaking was the highest possible promise that could be given and he recorded his extreme disappointment with the Respondent and the events to which the Respondent's misconduct had given rise.

47.9 The Respondent's complete failure to maintain proper accounts had been a consistent feature of these cases, making it more difficult to trace the missing money and for the clients, and their solicitors to investigate the losses and to rectify them. This was a further cause of harm and an aggravating feature. It also made it almost impossible for the SRA to investigate and to exercise its proper functions in regulating the profession and protecting the public. The SRA had no files to review, save for those relating to Mr G. Other files had apparently gone missing or had not been received by those to whom they had been alleged to have been returned. The files had to be reconstructed with the cooperation of other solicitors with their "mirror" files which would inevitably have added to the cost of the intervention proceedings and the proceedings before the Tribunal.

47.10 For those picking up the litigation afterwards, such as Mr Khaitan for Mr G, the task must have been extremely difficult. The Tribunal found that Mr Khaitan had shown commendable resilience and determination necessary to take steps to protect the interests of Mr G and done his best to remedy the chaos left behind by the Respondent. Mr Khaitan had faced an extremely frustrating situation. The Respondent's repeated failure to comply with Court Orders was further evidence of harm which struck at the heart of public confidence in the providers of legal services and the entire judicial system. There was potential for real damage to the public's perception of the efficacy of the judicial system and its ability to enforce its own Orders. It was vital for a civilized society that the public retained confidence and trust in the judicial system in order for it to function effectively and to maintain its global reputation for high standards. The Tribunal wished to reassure members of the public reading this Judgment that the circumstances which arose in this case were very rare. The Tribunal trusted that its comments here would act as a persuasive deterrent to any solicitor who was minded to behave in the same way as the Respondent. The Tribunal was satisfied that the Courts dealing with litigation arising from these cases had done everything possible to secure or the return of funds to those harmed by their absence. However once this Respondent had chosen to leave the jurisdiction of England and Wales in order to avoid "facing the music", there was little that could be done in the context of civil proceedings to bring him back. The Respondent loudly protested his innocence, but seemed disinclined to take any practical steps to do so in an appropriate public forum such as this Tribunal.

47.11 The Tribunal wished to emphasise that the harm caused by the Respondent stood out as a key feature of this case. Even if the Tribunal had not found the allegations of dishonesty proved, applying the principles in Weston *ibid* the Tribunal would have made an Order striking the Respondent's name off the Roll. He had demonstrated a complete abdication of all responsibility for his clients and their money and had exercised no stewardship at all of funds in the 4 cases brought before the Tribunal.

The Tribunal's analysis of what had occurred built up to an overwhelming case for striking off, even absent dishonesty, by reason of the seriousness of the Respondent's misconduct and the resulting harm. On the same set of facts the Respondent had demonstrated a complete lack of integrity where that had been found proved, and the Tribunal would have struck him off the Roll for those matters alone applying Bolton principles.

47.12 The Tribunal found that the events that occurred were solely due to the Respondent's own fault and failure. His prevarication was intended to delay matters coming to a head, aimed at putting off the day of reckoning.

47.13 The Tribunal had concluded that there was an element of planning in the Respondent's actions. For example, in the case of R, the money should have been paid over in December 2010, but the Respondent took no steps to ensure that it was paid over at that time. He waited until he was contacted by others in spring/summer 2011 before taking any steps and then all he did was provide entirely bogus legal arguments for why payment should not be made. It could hardly be said that the Respondent had forgotten about the undertaking as he had signed off on the variation in September 2010, and correctly paid over £75,000 six months previously. The Respondent's course of conduct in 2011 to 2012 led the Tribunal to believe that his actions were planned rather than spontaneous.

47.14 The Respondent's abuse of his position of trust fell firmly within the principles set out in Weston *ibid*. By the Respondent's own admission he did not have a client account so did not exercise proper stewardship of client money. That was his choice – a client account which complied with the SAR could have been easily established at his bank. Other solicitors managed to abide by the SAR and it was difficult to see why the Respondent had not done so bearing in mind his apparent intelligence. It appeared to the Tribunal that the Respondent had difficulty in accepting that the professional rules and regulations that applied to solicitors applied equally to him. The Respondent was not a special case. Being unable to identify client money fell within Weston principles. In the cases of V, Mr G and AHL, the Respondent blatantly disregarded his clients' instructions, a gross breach of client trust. During the time period of these allegations, the Respondent admitted that he did not have a client account and did not have account ledgers. No ledgers were found on the intervention. The Respondent had said in sworn evidence at least twice that he did not run a client account. The Tribunal took account only of the evidence put before it and made no comment on whether the Respondent had ever maintained a client account. However the fact remained that in the four cases before the Tribunal there were substantial amounts of money that were unrecorded in any ledger, client or otherwise, and in any event, save for approximately £11,000 found on Intervention, no money had been found or plausible explanation for its whereabouts given.

47.15 The appropriate, indeed the only sanction open to the Tribunal bearing in mind the seriousness of the allegations found proved including dishonesty, absence of any Financial Stewardship, lack of integrity and trustworthiness and the seriousness of the underlying facts, was that the Respondent's name should be struck off the Roll of Solicitors immediately. He was not fit to practise as a solicitor. The Tribunal would be failing in its duties to protect the public from harm and to maintain public confidence in the reputation of legal services providers, and in particular all other

solicitors if it imposed any other sanction. Members of the public would be shocked and dismayed if the Tribunal permitted this Respondent to continue to practise. He had only himself to blame.

47.16 When delivering its decision on sanction in open court, the Chairman of the Tribunal stated that this case was about as serious as a case gets. The Respondent breached a solicitor's undertaking and had not accounted for the money that should have flowed from it, thereby causing difficulties for the two parties involved. In addition, he breached Orders of the High Court. Secondly, he held monies in contemplation of a matrimonial settlement and paid that money away at about the time an Order was made, thereby causing huge difficulties for his by then ex-client for whom he held the money, and in turn his ex-client's ex-wife who was the intended recipient. He then went on to breach Orders of the High Court, including one with a penal notice attached. There were two other matters which, with the exception of breaching Court Orders, had all the other features including very unhappy outcomes for the parties involved. The Tribunal had made findings of dishonesty, there were no exceptional circumstances and a strike off was proportionate. Absent a finding of dishonesty, the Respondent's treatment of client money lacked any custodianship and a striking off Order would have been made applying Weston. Absent dishonesty and Weston facts, the conduct of the Respondent towards the Courts, his clients, fellow solicitors, his regulator and in these proceedings lacked integrity, probity and trustworthiness which would of itself have led to a strike off following Bolton principles.

48. **Costs**

48.1 Mr Williams applied on behalf of the Applicant for costs totalling £161,432.55 after reductions to the schedule as served on the Respondent to allow for the reduced length of the hearing totalling £13,705.08. These costs included the costs of the Respondent's failed application to strike out the proceedings and disclosure and all other interlocutory applications. Mr Williams also provided the Tribunal with his own fee note which included a detailed breakdown of his work. An award of costs was at the discretion of the Tribunal. Given the findings made against the Respondent, Mr Williams submitted that the Tribunal's discretion should be exercised in favour of the Applicant. There should be no reduction in respect of the allegation which was found not proved. The costs were high and the hearing had been relatively short. However, costs were always going to be substantial because of the Respondent's approach to the SRA's investigation and the Tribunal proceedings. Mr Williams applied for the costs to be summarily assessed by the Tribunal and immediately enforceable against the Respondent. The Respondent was bankrupt in England and Wales and had remained bankrupt beyond the usual period. He had made assertions of impecuniosity at various points, but there had been no disclosure of his means to enable a proper assessment to be made. In cases where a respondent is palpably impecunious, the Tribunal on occasions makes Orders for costs not to be enforced without leave of the Tribunal. Mr Williams submitted that such an Order would not be appropriate in this case. A vast amount of work had been involved in this case. Mr Williams said that he could not recall proceedings before this Tribunal with such a volume of interlocutory activity as this one.

48.2 The Chairman asked Mr Williams for his client's reaction if the Tribunal was minded to order detailed assessment of the Applicant's costs. Mr Williams said that, whilst

the Applicant fully understood the point made, it continued to press its application for summary assessment. A detailed assessment would only be practical if the Respondent chose to engage with the process. If the Tribunal was minded to order detailed assessment, it ought to be coupled with an order for an interim payment in favour of the Applicant payable with immediate effect.

48.3 The Tribunal considered the claim for costs and the submissions made on behalf of the Applicant. These proceedings were properly brought by the Applicant in all respects, including allegation 1.8 in respect of the case of H which had been found not proved. The Respondent must be ordered to pay the costs of these proceedings without any reduction in respect of the not proved allegation, which was merely one allegation out of 10, 4 of which involved dishonesty. The Tribunal had insufficient information to enable it to summarily assess what was likely to be a complex bill. The total claim for costs after applying a reduction to allow for the shortened hearing was £161,432.55. The Tribunal therefore intended to refer the issue of the quantum of costs to the Court for detailed assessment.

48.4 Detailed assessment was likely to take some time to complete and it was wrong for the costs liability to remain a burden on the profession in its entirety in the interim. The Tribunal had therefore decided to accede to the Applicant's request for an interim payment order against the Respondent payable immediately. The Respondent was the author of his own misfortunate: his obstructive approach to these proceedings and his failure to provide any response to the allegations against him had inevitably caused the costs to escalate to their current level. Doing the best it could on the information available, the Tribunal had decided that it was appropriate to Order the Respondent to make an immediate interim payment of £106,545 which represented approximately two-thirds of the amount of the reduced claim and was fair and proportionate to both parties. The Tribunal made it clear that "immediate" in this context meant two working days after service of the Tribunal's Order on the Respondent (not its Judgment which would take longer to produce) in accordance with the directions for service contained in the Tribunal's Directions Order dated 10 February 2014.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, ASHOK KUMAR SANCHETI, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society. The Tribunal further Ordered that the Respondent do immediately pay the sum of £106,545.00 to the Applicant by way of interim payment.

Dated this 21st day of May 2014
On behalf of the Tribunal

J. C. Chesterton
Chairman