The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 23 July 2014 in respect of the finding of lack of integrity and sanction. The appeal was heard by Lady Justice Sharp DBE and Mr Justice Holroyde on 19 January 2016 and Judgment handed down on 27 May 2016. The appeal was dismissed in its entirety. Scott v Solicitors Regulation Authority [2016] EWHC1256 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11195-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROBERT STUART FRANKLIN SCOTT Respondent

Before:

Miss J. Devonish (in the chair)
Mr J. C. Chesterton
Mr R. Slack

Date of Hearing: 2nd to 5th June 2014

Appearances

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

Ms Susanna Heley, Solicitor, RadcliffesLeBrasseur, 5 Great College Street, Westminster, London, SW1P 3SJ for the Respondent

---

JUDGMENT

Allegations

1. The allegations against the Respondent made on behalf of the Solicitors Regulation Authority ("SRA") were as follows:

1.1 In breach of Principle 7 of the SRA Principles 2011 he has failed to deal with the SRA in an open, timely and cooperative manner;

1.2 In breach of Rule 22 of the Solicitors Accounts Rules 1998 and/or Rule 20 of the SRA Accounts Rules 2011 he withdrew money from client account in circumstances other than permitted by either said Rule;

1.3 He permitted money to pass into and out of client account when not accompanied by the conduct of a legitimate underlying legal transaction and thereby breached all or any of Rules 1.02, 1.03 and 1.06 of the Solicitors Code of Conduct 2007 and/or note (ix) to Rule 15 of the Solicitors Accounts Rules 1998;

1.4 On or after 6 October 2011 in breach of or any of Principles 2, 3, 6 and 10 of the SRA Principles 2011 and/or Rule 14.5 of the SRA Accounts Rules 2011 he provided banking facilities through client account by making payments into and transfers or withdrawals from client account that did not relate to underlying transactions or to a service forming part of his normal regulated activities;

1.5 In breach of Principle 8 of the SRA Principles 2011 he failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

2. Allegations 1.1, 1.2, 1.3 and 1.4 were put as ones of dishonesty, although for the avoidance of doubt it was submitted that it was not necessary to establish dishonesty to substantiate all or any of them.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 29 October 2013 with exhibit DEB 1
- Letter from Mr Barton to the Tribunal dated 14 May 2014 enclosing:
    - Statement of Mr Gary Page dated 13 May 2014 with exhibit GP 1
    - Statement of Ms Heather Seabrook dated 14 May 2014 with exhibit HS 1
    - Client ledger K75/3
- Letter from Mr Barton to the Respondent dated 2 December 2013 comprising Civil Evidence Act Notice
- E-mail from M School to Mr Barton dated 22 May 2014 with attachments
- E-mail from L School to Mr Barton dated 30 May 2014
- E-mail from Mr Barton to the Tribunal dated 20 May 2014, attaching the Applicant's statement of costs
- Applicant's handwritten addendum to statement of costs dated 5 June 2014

Respondent

- Letter from the Respondent to the Tribunal dated 17 December 2013
- Respondent's bundle comprising:
  - Part I: Authorities
  - Part II: Respondent's evidence
- E-mail from Ms Heley to Mr Barton dated 29 May 2014 timed at 13.16
- E-mail from Ms Heley to the Tribunal dated 29 May 2014 timed at 17.07
- Judgment in Tribunal case number 11167-2013 Austin and Sanders
- Judgment in the case of Bultitude v The Law Society [2004] EWCA Civ 1853

Preliminary Issues

Application to admit documents on behalf of the Respondent

4. For the Respondent, Ms Heley as explained in her e-mail to the Tribunal of 29 May 2014 timed at 13.16, made an application to admit documents comprising a supplemental witness statement from the Respondent dated 29 May 2014, medical evidence in relation to the Respondent, a witness statement from Ms Julie MacFarlane ("JM") a former employee of the Respondent's firm dated 29 May 2014 and a Court Order made by consent on 9 December 2011 relating to payment of maintenance by the Respondent. Ms Heley acknowledged that these documents were served rather late and explained that the Respondent had been acting for himself due to financial constraints; he had been made bankrupt on 1 April 2014. His fees were now being paid for by a third party and Ms Heley's firm had been consulted on 23 May 2014. Any failure of the Respondent's was in not understanding how to answer questions because of lack of legal advice. The Respondent now made admissions that should allow the case to come to a swift conclusion. The new documents included character references which Ms Heley confirmed she wished to have considered as part of the evidence. None of the individuals giving testimonials would be called as witnesses. Ms Heley understood that the Applicant was neutral in respect of her application relating to the above documents. However there was also an e-mail to the Respondent from Mr BW (see below), which had been received late the previous night, setting out some relevant issues. The Applicant objected to its admission into evidence. Ms Heley submitted that the document would assist and that the Respondent had done a lot of work to prepare for the hearing and had not asked for an adjournment. No one had previously asked BW about the issues and she had suggested that they should. The Respondent had made efforts to contact BW over the last week and finally had received an e-mail response. It said that BW had no interest in acting as a witness but thought that it was fair to provide some information. His account did not differ from the Respondent's but added quite a lot about context.

5. For the Applicant, Mr Barton submitted that the Respondent's supplemental witness statement was helpful and confirmed that the Applicant was neutral about its admission into the evidence. The Applicant did not accept the reasons given for late service but the statement did clarify and provide an awful lot of information that the Applicant had not previously had and the Applicant criticised the Respondent for not providing information. Mr Barton confirmed that he was neutral about the character references. However he submitted that BW's e-mail was not evidence; there was no

way of knowing who had sent it; it purported to be from BW to the Respondent timed at 11:33 pm and was addressed to Ms Heley. BW would not come to give evidence but offered material that he thought might help the Tribunal. Mr Barton confirmed that the Applicant objected to its admission. BW was not and never has been a solicitor and the Applicant would submit that he was never a client of the firm but he was a prominent personality in the events described in the papers before the Tribunal.

6. The Tribunal was content to admit the documents listed in Ms Heley's e-mail of 29 May 2014 and to admit the testimonials. As to the e-mail described as having been sent by BW, the Tribunal had regard to the fact that Mr Barton had not had the opportunity to consider it and that BW was not to be called to give evidence and could not be cross-examined. In the circumstances, the Tribunal considered that it could attach very little weight to the e-mail. The Respondent could give factual information in evidence about his relationship with BW. Accordingly the Tribunal refused Ms Heley's application to admit the e-mail into evidence.

7. For the Applicant, Mr Barton referred the Tribunal to a small bundle of documents including information provided by two schools to which the Respondent's firm had made payments. Mr Barton had expected to be required to prove the facts by calling the schools' bursars but he understood that the Respondent now agreed this evidence and that it would not be necessary to call them as witnesses. It was agreed that these witnesses need not be called.

Factual Background

8. The Respondent was born in 1968 and admitted in 1992.

9. At all material times the Respondent practised as the sole member of Key2 Law LLP ("the firm") from offices at Jockey's Fields in central London. The firm had a branch office in Ewell, Surrey.

10. On 15 August 2012, Mr Gary Page, an Investigation Officer ("IO") employed by the Applicant commenced an investigation of the firm's books of account and other documents at the London office. He then produced a Forensic Investigation ("FI") Report dated 5 October 2012. The Report was stated to be an interim report but no other FI Report was produced.

11. In November 2012, the Applicant intervened into the Respondent's practice as a consequence of which his practising certificate was suspended and so far as the Applicant was aware he had not practised since that date.

12. On 30 May 2013, the Applicant decided to refer the Respondent's conduct to the Tribunal.

13. The Respondent and his wife were connected to the following entities which were referred to in the documents before the Tribunal:

- Key2 Claims (London) Limited ("K2C"). Its registered office was at the same address as the firm and it changed its name on 6 May 2010. Its directors were PG, MP and Key2 Directors Limited.

- Key2 Directors Limited ("K2Dirs"). Its registered office was at the same address as the firm and its directors were the Respondent and CDH (now known as CDS). They were husband and wife.

- Harcourt (Nominees) Limited ("HNoms"). Its registered office was at the same address as the firm and its directors were the same as those for K2Dirs. A search at Companies House showed that the Respondent and his wife were successively directors of Key2 Law Nominees with the Respondent resigning and his wife being appointed on 15 May 2012. The Respondent was the shareholder.

- CB (P) Limited ("CB"). Its director was the Respondent's wife.

- Key2 Secretarial Limited ("K2Sec"), which had been appointed as Secretary to the above entities. Its registered office was at the same address as the firm and its directors were the Respondent and his wife.

14. On 15 August 2012, the IO conducted an initial interview with the Respondent.

15. The Respondent informed the IO that bookkeepers (also referred to in evidence as cashiers) were responsible for the day-to-day maintenance of the books and records and that he had overall responsibility and control over accounting records with his wife as Head of Finance.

16. The Respondent's bankers were Clydesdale in London and the client and office accounts specified in the FI Report could be operated by the Respondent, his wife, Mr E a member of the firm, Mr M a solicitor at the London office and Mrs L a solicitor at the Ewell office.

17. The Respondent was the firm's Money Laundering Reporting Officer ("MLRO") and he told the IO that he had a written policy in place and that fee earners and staff had been trained in money-laundering issues.

18. The Respondent was asked if there were any matters he wanted to bring to the IO's attention and he replied "No".

19. The IO compared total liabilities to clients with cash held in client bank accounts as at 30 June 2012 and calculated what he described as a "potential" minimum cash shortage of £268,635.20.

Allegation 1.1

20. During the course of the investigation, the IO and Ms Heather Seabrook ("HS") also employed by the Applicant made a number of attempts to obtain information from the Respondent in answer to specific questions. These included on 17 September 2012, that the IO sent an e-mail to the Respondent in relation to compliance with decisions made by the Legal Ombudsman regarding complaints made about the firm and production of files and information in respect of various client matters.

21. HS sent a further e-mail on 26 September 2012. The IO e-mailed the Respondent on 3 October 2012.

22. The Respondent then e-mailed HS requesting that the IO contact him urgently. The IO attempted to do so on several occasions.

23. The Respondent then e-mailed HS copied to the IO at 3:21 pm on 3 October 2012 concerning the Respondent's negotiations with HMRC with a view to entering into a Companies Voluntary Agreement ("CVA") in respect of debts owed to HMRC and its rejection and asking to meet. In a telephone conversation at 5:45 pm on 3 October 2012, the Respondent stated that the debt owed by the firm amounted to £110,000 and that a receiver had not yet been appointed.

24. On 4 October 2012, the IO e-mailed the Respondent at 8:31 am:

> "Further to my previous e-mail please advise me on the following:
>
> - are you able to effect an orderly wind down of the firm and
> - are there any options available to you for distribution of files
>
> Please respond as soon as possible."

On the same day at 9 45 a.m., the Respondent replied:

> "The answer is yes to both. I will need to discuss it with you though.
> In the meantime, I attach the Proposal which I believe best sets out the current position. As you will see after a bad 18 months or so, we were back on track and able to pay off all creditors. However, HMRC took a different view – much to everyone's surprise and annoyance.
>
> Can we speak once you have perused the attached?"

25. On 19 October 2012, the IO e-mailed the Respondent, seeking information about the K2C ledger K75/3 (see below).

26. HS wrote to the Respondent again on 4 February 2013 and on 16 April 2013.

Allegation 1.2

K2C

27. On 13 September 2012, the Respondent produced to the IO a ledger card in respect of transactions carried out on behalf of K2C. No client matter file was produced. The ledger was 75 pages long and designated K75/3 and the IO identified sums of money paid in between 16 March 2010 and 14 August 2011, totalling £566,952.44.

28. The IO's examination of the ledger showed a number of payments from client account about which the Respondent was questioned in the e-mail of 3 October 2012. Payments from client account totalling £227,635.20 were summarised in the FI report. Most of them were round sum payments. The IOs were unable to identify any legal transactions associated with the payments. Payments totalling the figures set out below were paid as follows:

- £6,150 to two schools M and L both of which were fee paying schools for boys.
- £108,574.81 to BW.
- £23,640 to the Respondent
- £25,695 to HNoms,
- £5,200 to PG a director of K2C
- £43,375.39 by way of transfers to office account
- £8,000 to RS
- £2,000 to Key2 Law (Nominees)
- £5,000 to CB

29. The IO recorded in a handwritten note a discussion with the Respondent on 16 August 2012 about BW:

> "[The Respondent] stated that Mr [BW] is a consultant not employed by the firm and was originally engaged to generate work for the firm.
>
> [BW] introduced to [the Respondent] by a mutual client. Had ideas to generate new work and [BW] enquired to (sic) [the Respondent] if [the firm] would be willing to take on cases from [SH] of [CCS]. No referral fee/agreement. Have received 54 cases from [BW] via CCS. Believed paid 50% of fee to [BW].
>
> [The Respondent] to provide background to fees paid to [BW]. [The Respondent] accepts that he is the Supervising Partner and any criticism should be levelled at him.
>
> [The IO] Background to [the Respondent] and [BW]
> Details of all transactions referred to the firm by [BW] included CCS, [C21], and total refunds. [The Respondent] in dispute with [BW] – disagreement re overheads + monies taken in to be supplied by close of business 20 8 2012."

30. The IO said in his e-mail to the Respondent of 3 October 2012:

> "I refer to my colleague's e-mail of 26 September 2012 and my e-mail of 17 September 2012 requiring responses from you, thus far you have not responded to these requests and I must remind you of your responsibilities to comply with your legal and regulatory obligations to deal with your regulators and ombudsmen in an open, timely and co-operative manner as stated in Principle 7 of the SRA Principles 2011.
>
> I therefore require that you respond to these requests forthwith.
>
> I further require information on the following:

- With regard to the [K2C] ledger, your ref 75/3 please give me an explanation as to the nature of the various receipts of monies made into your client account and what due diligence checks were made in respect of these deposits. Please explain what reserved legal activity Key2Law LLP were undertaking and the underlying legal transaction with regard to these receipts…"

A3DT

31. The firm also had a ledger for an entity A3DT, designated A147/1. On 15 March 2011, Mr K paid £20,000 to the firm and it was credited to that ledger.

32. K asserted through his solicitors that he paid that money for the purchase of shares in A3DT. The Respondent's Note of explanation of his relationship with BW provided at the IO's request indicated that the funds were received for the purpose of purchasing shares prior to flotation.

33. On 8 March 2011, a letter was sent in connection with K's proposed acquisition of shares in A3DT. It bore the reference [BW] RFS A3DT 040311 with the firm's name and an address in Perivale at the head and the firm's address at the foot. It included:

> "We act for the above named company as corporate solicitors and can confirm the following details for your information.
>
> We are instructed by the company's directors and confirm their intention to list its shares onto a recognised share exchange during 2011. In accordance with those instructions we confirm that we are preparing the companies (sic) corporate affairs in preparation for the listing, the companies Directors have instructed its company secretary to create 50,000,000 million (sic) shares, of which 20,000,000 million (sic) are to be issued.
>
> We are also instructed to confirm that the company is willing to deliver shares to certain interested parties at a discounted price prior to the commencement of its formal listing process. [IL] (Director) has instructed us to confirm that (sic) company is willing to deliver such a number of shares to you that equate to a discount of 66.66% of the listing price of its shares on the day of listing, this means that if the listing prices of the share were to be £.99 the price purchase price today will be £.33 i.e. third of the price at listing, for the avoidance of doubt if you were to purchase £35000.00 worth of worth of share (sic) at £.99 you would normally receive 35,356 shares, however at the discounted price you would receive 106,061 shares (subject to maximum purchase amount of £85,000 shares).
>
> Lastly we confirm that only purchase at the discounted rate would be subject to a "lock in" for a 1 year period on the day of listing this means that you undertake not to sell or transfer the shares for a 1 year period from the date of listing. In the event that you decide to proceed please make any cheques payable to Key2Law LLP and but on the back of the cheque "Re: [A3DT] Ltd – A/147.

If you have any further questions please do not hesitate to contact me."

34. A further letter was sent to K dated 16 March 201, including:

> "We are in receipt of your cheque for the sum of £20,000 (Twenty Thousand Pounds) and we have advised the company's directors accordingly.
>
> As we have said, it is the company's intention to list onto a recognised share exchange during 2011, once the listing date and the companies (sic) share price has been established the company shall deliver your shares in accordance with previous correspondence.
>
> In the meantime if you have any further questions please do not hesitate to contact me."

35. The IO conducted a search at Companies House which showed that the director of A3DT was K2Dirs. The shares were held by Key2 Management, the shares in which were held by the Respondent. The company was struck off the register on 17 April 2012.

36. The ledger for A3DT which was designated A147/1 showed that the monies received from K on 15 March 2011 were paid out in full to various recipients identified in the ledger by 1 April 2011. The recipients included HNoms £1,500 on 18 March 2011, and a total of £12,200 paid to IL on various dates (including £4,670 on 18 March 2011 and £5,300 on 23 March 2011), £3,000 to a VJ on 23 March 2011, £2,000 to L school on 30 March 2011, £500 to a charity D on 1 April 2011 and £2,814 to BW on 1 April 2011. The transfers for all the payments quoted were authorised by the Respondent. The residue was taken as costs on 1 April 2011, reducing the balance on the ledger to nil.

37. The papers included an instruction to pay £2,250 to IL on 8 April 2011. There was no information available to the IO about the credit to the ledger of the same sum on 8 April 2011 but the narrative demonstrated that it was an inter ledger transfer from K75/3. There was also a payment of £13,000 transferred in the same way to a Ms ST on 20 April 2011 and there was again an accompanying credit to this ledger by transfer from K75/3.

38. Through his solicitors, K asked that the funds be returned and they were not returned.

<u>Allegations 1.3 and 1.4</u>

39. These allegations arose out of the IOs not being able to identify legal transactions to accompany a significant number of payments out of client account and the inter ledger transfers referred to above. There were detailed email exchanges about the inter ledger transfers including those indicating Respondent's approval which were not disputed. They included:

BW to JM on 8 April 2011, copied to the Respondent at 14.10:

> "The details and instructions are as follows. Please transfer from [K2C] the sum of £2250 to A/147. Then make payment from A/1472 account number… Mr [IL] the sum of £2250.
>
> This sum is to be sent by Chaps today ASAP thanks as always for your assistance.
>
> Bob has been copied in."

The Respondent to JM on 10 April 2011 at 16.57

> "OK"

Allegation 1.5

40. On 3 October 2011, the Respondent informed the IO that he had been negotiating with HMRC to agree a CVA. His proposal to creditors was dated 25 September 2011. The FI Report recorded that the debt owed to HMRC was £232,317 (the figure being taken from a draft estimated statement of affairs as at 24 September 2012 attached to the draft CVA). HMRC rejected the CVA.

Witnesses

41. **Mr Gary Page** gave evidence. He had worked for the Applicant for six and a half years. The witness confirmed the truth of his statement dated 13 May 2014 and the FI Report dated 5 October 2012. He had called the Report "Interim" because he could not complete the investigation. The firm had two members at the material time but the second member Mr E played no part in running the firm that the witness could see. The witness had analysed the ledger K75/3; it had taken him quite some time because it was quite voluminous. The witness confirmed he had never been given any matter file or papers to accompany the ledger. He had spent five or six days at the firm and the Respondent had been present on four of them but he was not always there. The witness had spoken during the investigation to the Respondent's wife who was the Head of Finance at the firm and confirmed that the Respondent told him that it was in order to liaise with her. From the Respondent's wife, the witness had learnt that there was apparently no file related to the ledger. The witness had asked her to supply him with the clients' instructions and she said the bookkeeper had these on computer records in the form of e-mails from BW which the witness then required but subsequently to that he did not receive anything.

42. In cross-examination by Ms Heley, the witness agreed that at the initial meeting the Respondent had been cooperative and at the time told him all he wanted to know and that the witness was welcome to look round. The witness was referred to an e-mail from the Respondent to HS on 3 October 2012 timed at 15.31. The Respondent admitted that he had not replied substantively to HS's e-mail of that day at 9:40 a.m. but in his reply the Respondent asked "could we please arrange to meet at your earliest convenience?" The witness stated that there was no response from the Applicant to that request and no meeting was arranged. On the following day 4 October at 8:31 a.m., the witness e-mailed the Respondent as quoted in the background to this judgment and at 9.45 am the Respondent replied concluding "Can

we speak once you have perused the attached". The witness checked his file and stated that there had been a further e-mail exchange including about current membership of the firm but the witness could not recall that there were any further conversations. In respect of the witness's e-mail of 19 October 2012 at 14.21 to the Respondent, a reminder in respect of the e-mail HS had sent on his behalf on 3 October 2012, the witness confirmed that this was the last before letters were sent out after the intervention in spite of the Respondent's requests for meetings and discussions.

43. In respect of Mr Barton having said that the FI Report was based on no information from the Respondent, the witness stated that he had asked specific questions and the Respondent did not answer him. The witness had not attempted to speak to BW or SH of CCS; the witness had an e-mail regarding complaints from SH [of CCS] and so saw no point in speaking to him. He had not made any attempt to speak to K or IL or any of the people named in the K75/3 ledger aside from the Respondent. The witness believed that the money paid into that ledger belonged to people who were making claims.

44. The witness was not aware of issues regarding the Respondent's dependence on alcohol or otherwise; the witness stated that he believed he did smell drink on a couple of occasions. As to whether the Respondent was coping well or was harried, the witness stated that "harried" was a good description; the Respondent was very jumpy and jittery. The witness agreed that the Respondent had mentioned his difficult home life but as by 3 October they were communicating by e-mail it was hard for the witness to judge whether there was any change in the Respondent's behaviour in the light of the winding up petition and failure of the CVA. The witness stated that he had no involvement with the Respondent or the intervention into the firm before the FI Report was sent out.

45. The witness clarified for the Tribunal that he had not enquired about the £300 file opening fee referred to in the Respondent's Note about his relationship with BW and regarding the credit card receipts, his attention had been drawn to payments going out rather than those coming in. The witness agreed with the Tribunal that his conclusion that there was potentially a cash shortage, was based purely on his consideration that there were improper transactions. He had considered the relationship with BW improper because from his, the witness's researches at Companies House BW had nothing to do with the firm and while the Respondent was connected to the firm, payments to BW appeared to be personal. The witness regarded payment to G to be improper although G worked at K2C because the payment was personal. The witness confirmed that it was not known what RS a recipient of one of the payments was.

46. **Ms Heather Mary Seabrook** gave evidence. She was now an intervention officer with the Applicant but in 2012 had been the IO's supervisor. She confirmed the truth of her witness statement dated 14 May 2014 and of the report prepared for the purposes of the committee which considering intervention into the firm. In cross-examination, the witness stated that she had met the Respondent's wife in August and September 2012. The Respondent appeared a bit jittery but other than that she had not formed an opinion of him. She had not attended the intervention or requested any documents from the intervention agent. She had no contact with BW, SH (whom she did not remember), K or IL. She considered that the individuals who paid money into

the firm via the credit card terminal, which money was recorded in the K75/3 ledger were clients who owned the money in that account, but that was just her opinion. In respect of the A3DT ledger, she thought K paid money in as a client and she imagined A3DT was the client. Her involvement in the e-mail exchanges between the IO and the Respondent arose because this was a joint investigation and she went with the IO to the firm on two occasions.

47. **Ms Julie Macfarlane** gave evidence by telephone. She confirmed the truth of her witness statement. She was employed by the firm from 2004 until it closed in November 2012. She had been a legal cashier for about 17 years up to 2012. The witness had learned on the job but had trained since leaving the firm and was now a member of the Institute of Legal Cashiers. The witness agreed that ledgers numbered K75/1 and K75/2 would have existed in the system but she did not know what they were for. K stood for K2C and 75 was the client number. In respect of the A3DT ledger, the witness confirmed that the documents including payment batch reports and e-mails which were before the Tribunal were definitely typical of entries made in the A3DT ledger. If a payment was to be made out of client account, a copy was placed in the client account payment file in the accounts department of the firm with a copy of the bank transfer and e-mail attached.

48. The witness confirmed that an entity SL provided the credit card account terminal. Anything that came in through the SL credit account facility would automatically go to client account because SL had been given details of that account. The system applied to all credit card payments. Individuals wishing to pay the firm by credit card gave the fee earner details of their bank account or credit/debit card number. The fee earner would sign a form and send it to the accounts department who would process it on the terminal.

49. For K2C matters, the individuals gave permission for the payment over the phone to K2C which sent a standard form to the firm. The witness was not involved in setting up the system, this had been done in the Ewell office; she just took it over. She had not developed the form. Either the witness or RD (another bookkeeper/cashier) put the information into the terminal. The money then arrived in the firm's client account and the cashiers posted a credit to the K75/3 ledger. The witness confirmed that when individuals who had paid the firm by credit card had the money returned, she processed the refunds. Instructions would have come from K2C. Mainly BW gave those instructions but there were a couple of other people whose names she could not remember. As to who was enabled to make payments out of client account, the witness and RD had their own cards as cashiers. They used a key pad.

50. The witness did not know how the form of words used as the narrative in the K75/3 ledger, which was generally for example "Via MasterCard", came to be used on this one file. She did not know whether a matter file was created for the ledger but assumed there was one; she kept purely accounts material in a file. The witness agreed that there were hundreds, quite possibly thousands of credit card forms; they were kept on her desk in lever arch files in boxes. The boxes were not handed to the IO, just the main accounts department file with the instructions for payment. It had been a joint decision of the witness and RD to keep their own file because of the volume, so they could get the information when they needed it.

51. The witness agreed, when taken to examples that there were inter ledger payments; she did not remember the £13,000 transfer from K75/3 to A147/1 made on 20 April 2011.

52. In her statement the witness said:

> "The ledger K75/3 related to the client [K2C], which was owned and controlled by Mr [BW].

As to how she knew that K2C was owned and controlled by BW, this was probably because the Respondent had told her. So far as the witness knew, BW was never a solicitor, nor did she ever believe that he was employed by the firm. [A telephone note produced by the M school referred to BW as being a solicitor for the WSs.] She followed a system for obtaining authority to implement BW's requests for payment. The physical entries made onto the computer in respect of the K75/3 ledger were carried out by the witness or RD her cashier colleague. Normally BW would telephone or e-mail the witness or RD and say that he wanted money transferred; the witness would ask if he had spoken to the Respondent and forward the e-mail to the Respondent for permission to make the payments. The witness confirmed that all payments on the ledger were authorised in that way. The witness knew that she was going to get an instruction from BW; sometimes he telephoned her three or four times and then sent an e-mail and she would say that she needed the Respondent's approval first because the Respondent was the senior partner. The witness had no involvement with BW before the opening of the ledger and agreed that the 26 March 2010 payment on the ledger was probably the first payment to him. She always went to the Respondent and never to anyone else. The witness could not recall any occasions when she went to the Respondent with a request from BW and the Respondent did not authorise the payment but there might have been a couple of occasions.

53. When the witness sent an e-mail to the Respondent, sometimes but not always, she looked at what was on the ledger to see if there was money available to make payment, She would not send the payment if the money was not there but she was too busy to look into it until she was going to act on the instruction. Even then she only sometimes checked. The Respondent had access to the ledger but she did not know if he would routinely have checked.

54. The witness stated that she did not like BW's manner. BW's requests were intrusive to her daily workload. There was not just one e-mail but constant bombarding and she was unable to deal with other things on a daily basis. There were e-mails because she told BW that he must put the request in an e-mail. She had told the Respondent that she regarded the interruptions as a nuisance and the Respondent knew that she was under a lot of pressure.

55. In answer to questions from the Tribunal, the witness stated that she could not remember there being any other files similar in nature to K75/3.

56. The witness stated that the payments made to the Respondent from the ledger were always made on the instructions of BW. She did not recall the circumstances of specific payments but agreed that the payment to the Respondent of £20,000 on 21 June 2011 was unusual. The witness felt the entries on the K75/3 account were

unusual, in respect of the different companies and where the payments were going; she had never dealt with anything like that before; it was the volume that was unusual. She did not really know the background; she was just acting on BW's "say so"; it was not for her to question him about the purpose of the payments. There was no other individual aside from the Respondent giving instructions to move money around on client account.

57. **The Respondent** gave evidence and save as set out below, it is recorded where appropriate under the relevant allegation. The Respondent testified that at the material time, his health had not been particularly good. He had developed an alcohol dependency and also depression. In 2010, the Respondent had been sued along with another director of the firm by an ex-client. There had been an 18 day High Court trial and the preparation beforehand had been extremely difficult. It had taken the Respondent away from fee earning. He was the main "rainmaker" and largest biller for the firm. The pressure was enormous and he was successful in the litigation but to his shame he had "hidden behind the bottle for a little bit". His GP recommended a consultant psychiatrist to whom the Respondent first went in May 2011. He started to see an alcohol dependency adviser once a week but building up to the trial he stopped with a view to going back after the trial. The Respondent was subject to psychoanalysis and tests and was initially diagnosed with mixed anxiety and depression and alcohol dependence and in a report dated 17 December 2012 to his GP, the consultant psychiatrist stated that given his level of alcohol consumption it had to be the first factor to be addressed and that it was "unlikely any anxiety, medication or approach is going to work in its presence".

58. As to the precise nature of the firm's work, it had been set up in 2004 in London doing commercial work related to asset-based finance: litigation to recover money due to banks and finance houses, advising insolvency practitioners and work related to mergers and acquisitions. The Respondent had acted for the biggest corporation in the UK with spin-off work involving television and sports stars. The firm had bought the office in Surrey from administrators; it had 30 or so people undertaking private client work. They had merged the two entities so that they had a full service offering; the London office could undertake "big ticket" work with Surrey undertaking conveyancing, Wills and probate. The Respondent agreed that while Mr E was still a member of the firm at the time, the Respondent was effectively the sole principal of the firm because he owned 100% of the equity. The Respondent had told the IO that the responsibility was his alone and he had never resiled from that position.

59. As to what the Applicant called the Key 2 brand, the Respondent testified that if someone wanted a limited company to start a business, the Respondent would change the name of a shelf company. This had been done for K2C and A3DT. The Respondent had a stock of five to 10 such companies at any one time.

60. It was put to the Respondent that his referees spoke well of him and the Respondent said he had a lot of good clients; it was a very good practice which punched above its weight. One of the referees commented on his eye for detail and the Respondent agreed that in legal cases that was correct.

Findings of Fact and Law

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

62. As requested by Ms Heley, the Tribunal also had regard to the testimonials submitted for the Respondent in determining the allegations of dishonesty.

(The submissions recorded below include those made orally at the hearing and those in the documents. Quotations omit cross references to other documents unless they aid comprehension. Paragraph numbers in quotations have generally been omitted.)

63. **The allegations against the Respondent made on behalf of the Solicitors Regulation Authority ("SRA") were as follows:**

Allegation 1.1 - In breach of Principle 7 of the SRA Principles 2011 he has failed to deal with the SRA in an open, timely and cooperative manner;

63.1 The Tribunal was referred to the relevant rule and Principles by both parties. Principle 7 stated that a solicitor must:

> "Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner;"

The notes to the Principles set out at 2.1 that

> "The Principles embody the key ethical requirements on firms and individuals who are involved in the provision of legal services. You should always have regard to the Principles and use them as your starting point when faced with an ethical dilemma."

Part 2 of the SRA Principles 2011 contained application provisions:

> "3: Application of the SRA Principles in England and Wales
>
> > "Subject to paragraphs 3.2 to 6.1 below and any other provisions in the *SRA Code of Conduct*, the *Principles* apply to you in relation to your activities carried out from an office in England and Wales, if you are:
> >
> > (a) *a solicitor, REL or RFL* who is *practising* as such, whether or not the entity through which you *practise* is subject to these *Principles*;"
>
> …
>
> "5. Application of the SRA Principles outside practice
>
> 5.1 In relation to activities which fall outside *practice,* whether undertaken as a *lawyer* or in some other business or private capacity, *Principles* 1, 2 and 6 apply to you if you are *a solicitor, REL or RFL.*"

63.2 For the Applicant, it was submitted that the facts behind allegation 1.1 were all admitted. The Respondent accepted that he did not reply to e-mails dated 17 September 2012, 26 September 2012, 3 October 2012 and 19 October 2012 and to letters dated 4 February 2013 and 16 April 2013 and that in having failed to do so had breached Principle 7 in the way that was alleged. However the Respondent advanced the argument that because his practising certificate was suspended on the intervention into his firm that had the consequence of relieving him from the obligation to fulfil some of the SRA Principles. A point was raised by Ms Heley about the date of the intervention which was stated in the Rule 5 Statement to be 12 November 2012. The decision to intervene was made on 12 November 2012 and Mr Barton was happy to agree the date of intervention as 23 November 2012. Mr Barton submitted that on the intervention, the Respondent's practising certificate was automatically suspended and there had been no application to reinstate it. In his statement, the Respondent said:

> "Early 2013 was an extremely difficult time for me, for the reasons outlined above. I am aware that I was not keeping up with correspondence and there is still a large quantity of correspondence which I have not been able to deal with. In the circumstances, I must admit that I failed to respond to the two letters sent by the [Applicant] however I am advised by my solicitor not to admit or deny that this amounts to a breach of Principle 7 because I was not practising during the relevant period and paragraph 5.1 of the SRA Principles application provisions indicates that Principle 7 does not apply in those circumstances."

63.3 Mr Barton referred the Tribunal to the letter to the Respondent dated 4 February 2013 from HS. This letter was seven pages long and far and away the longer of the two letters in question; the other being that of 16 April 2013 also from HS. The February letter was the Applicant's initial letter written after the conclusion of the investigation and enclosed the FI Report dated 5 October 2012. The Report was preliminary because GP and HS had attempted to elicit significant amounts of information from the Respondent about the movement of money shown in the 75 page ledger K75/3. The Applicant had the IO's Report which gave an opportunity to ask the Respondent to answer a number of properly put and detailed questions about how he conducted his practice. The February letter was not replied to and was followed up by a letter from HS dated 16 April 2013.

63.4 Mr Barton submitted that if the Respondent was right in submitting that because his practising certificate was suspended, he was not practising and so he could say that the conduct complained of took place outside practice, Principles 1 and 2 still applied. Principle 1 required a solicitor to uphold the rule of law and the proper administration of justice and Principle 2 required that a solicitor must act with integrity but in that event he would be free for example not to act in his client's best interests. He could run his business although suspended from reserved activities and was free as many solicitors in that position were, to deal with business activities within the practice that fell short of reserved activities He would not be bound by Principle 10 that required that a solicitor must "protect *client* money and assets". Mr Barton submitted that it was absurd to suggest that the Respondent was only bound by Principles 1, 2 and 6 ("behave in a way that maintains the trust in public places in you and in the provision of legal services") simply because he had no practising certificate. The answer in part to the point was in the glossary, which set out that a solicitor:

> "means a person who has been admitted as a solicitor of the Senior Courts of England and Wales and whose name is on the roll kept by the *Society* under section 6 of the *SA* [Solicitors Act] save that in the *SRA Indemnity Insurance Rules* includes a person who *practises* as a solicitor whether or not he or she has in force a practising certificate...".

63.5 Mr Barton referred the Tribunal to the definition of "practice":

> "Means the activities, in that capacity, of:
>
> (i) a solicitor,"

Mr Barton submitted that this definition was not dependent on the individual holding a practising certificate; that interpretation would be wholly contrary to the Principles if by virtue of suspension of his practising certificate a solicitor could say that he did not have to answer the Applicant's questions. Mr Barton submitted that in 5.1, the reference to activities undertaken in some other business or private capacity did not apply to what had happened here and that the Respondent's failure to deal with the investigation was caught by the very simple definition of "practice".

63.6 Regarding the allegation of dishonesty generally, at the request of the Tribunal made because of the Applicant's reliance upon inferences, Mr Barton made submissions on the case of Bultitude v The Law Society [2004] EWCA Civ 1853 in which the Court of Appeal said:

> "In my judgment, the Divisional Court was right to find out as it did in relation to the issue of dishonesty. At the behest of Mr Browne, we have looked at more of the evidence than was referred to in the judgment of the Divisional Court, but to my mind that has only served to confirm the conclusion that Mr Bultitude was dishonest.
>
> I accept of course that he is not shown to have intended permanently to deprive his clients of their funds. The proof of dishonesty in this context is not dependent upon proving that intention. Before he went to Bath, he knew that there was a serious problem, but he seems to have done nothing to address it other than to ask his staff to seek the assistance of Mr Rosen, and to solve it for him. Over the weekend, he made no enquiries as to how the problem was being resolved and on the Monday he was, it seems, only anxious to be reassured that Mr Rossides would now sign the accountant's report so that it could be filed in time. He did not ask Mr Rosen what had been done, nor is there any evidence to suggest that Mr Rossides knew what had been done. Indeed, in his proof of evidence, Mr Bultitude's stance was that he, never mind Mr Rossides assumed that the credit balances had been properly cleared. So as Mr Goodwin submitted in the Divisional Court, Mr Bultitude signed a cheque for £50,000 transferring his clients' funds to his office account without any supporting documentation and thus, it must be inferred, without knowing or caring whether his firm was entitled to be paid those funds. That, to my mind, satisfies both legs of the Twinsectra test, and the position is compounded by what happened thereafter. At some stage, as the Tribunal found, Mr Bultitude did become aware of the debit notes and once he saw

> those bogus documents, it must have been clear to him what had been done to clear the credit balances but he did nothing to backtrack. As the Tribunal found, he was guilty of conscious impropriety amounting to dishonesty in endorsing what had been done.
>
> That was not a momentary error of judgment and retention in the office of account of funds some of which at least belonged to clients clearly meant that the funds were not safeguarded as they should have been. They were therefore jeopardised, and although there was an audit trail, it was clouded by false ledger entries and bogus debit notes. In my judgment, this was a clear case of dishonesty of a serious kind."

Mr Barton submitted that Bultitude, in which dishonesty had been found, would apply if the Tribunal found as a fact that the Respondent neither knew nor cared regarding all or any of the transactions identified and this would be sufficient for the Applicant to make good the allegations of dishonesty in respect of 1.1 to 1.4. In respect of allegation 1.1, in the Rule 5 Statement, it was submitted that the Respondent was in the best possible position to explain what had happened to client money under his control and stewardship and that he had not at any stage offered a reason why he had not or would not answer the requests put to him. He had simply not responded at all and serial failure to do so could properly be construed as deliberate and obstructive and thereby dishonest.

63.7 For the Respondent, Ms Heley disagreed with Mr Barton's interpretation of this part of 5.1. She submitted that it did not just apply to private matters; If one was a solicitor who did not need a practising certificate to undertake an activity, 5.1 applied and the Applicant could not go beyond its jurisdiction that applied to those on the Roll and could not say that because an individual was a solicitor all rules applied to them; in certain circumstances only specific items of the rules might apply. If a solicitor was not in practice then paragraph 3 in the application provisions did not apply. Definitions in the glossary were circular. This was not a situation where the Respondent had just given up his practising certificate; it had been taken away by the intervention. It was suspended and he was prevented from practice and to do so would constitute a disciplinary offence. The Applicant asserted that the Respondent was bound to respond to letters under Principle 7 when he was not in practice under the rules but the rules omitted applying Principle 7 to those not in practice. The Applicant could have included Principle 7 where a solicitor was not in practice and it would be logical to do that but the Applicant had not chosen to do so. There might be an unfortunate lacuna in the rules. The Respondent apologised for his non-response but the Applicant had to make out the allegation and Ms Heley submitted that there was a problem with the law. Ms Heley also submitted that the Applicant was not assisted by the fact that it was not looking at conduct after the intervention took place, but before it; because the Applicant alleged failure to respond to letters under Principle 7 written when the Respondent was not in practice. It was open to the Applicant to allege that the Respondent had hampered the investigation by not responding to their enquiries and that could be reflected in costs.

63.8 As to the circumstances giving rise to the admitted facts, Ms Heley submitted that there was a temptation to go beyond what was alleged and make a judgment with hindsight which was not always the same as running a practice. The Respondent was

facing insolvency and a difficult home life and the Applicant said that he did not provide information. No one regretted more than the Respondent that he had not responded to the four e-mails, which occurred not least because of the intervention into his firm and his bankruptcy which had resulted in him not being able to work for 18 months. Ms Heley asked the Tribunal not to go beyond the Rule 5 Statement, and the evidence; No one had turned their mind to the question of the receipts of money until the last few days. The IO said he was concerned about payments out that he assumed were suspicious, which was the whole basis of the Applicant's case. A couple of payments on two ledgers look suspicious. There was no evidence that they were and a shortfall on client account was assumed. The IO's evidence was that no one had asked the intervention agents for any papers while the papers were with the Applicant or the intervention agents for 18 months. The Applicant had a duty to carry out a full and fair investigation. Despite the Respondent's admission that he did not respond to the Applicant, there were other avenues open to the Applicant to obtain the information. Ms Heley submitted that the benefit of the doubt should be given to the Respondent; there was quite a lot of doubt and the Tribunal needed to be very careful.

63.9 Ms Heley referred to the Rule 5 Statement, where the Applicant had stated that the failure to explain and account was a serious one and that the Applicant would submit at the hearing of the application that it was appropriate for the Tribunal to draw an adverse inference from it. Ms Heley submitted that she was quite struck by the basis of the allegation of dishonesty that it constituted; this was the first occasion that the Tribunal was asked to find dishonesty by inference in the Rule 5 Statement and it was repeated later on:

> "As stated in paragraph 17 above the Respondent is in the best possible position to explain what has happened to client money under his control and stewardship. He has not at any stage offered a reason why he has not or cannot answer the requests put to him. He has simply not responded at all and his serial failure to do so can properly be construed as deliberate and obstructive and thereby dishonest."

Ms Heley submitted that in plain English the inference did not follow; while the Respondent could be deliberate and obstructive he was not necessarily dishonest especially in the context of what was going on in his life at the relevant period. The Rule 5 Statement also stated that the Respondent had provided no information or assistance to the Applicant. It was not accurate; the Respondent attended a meeting with the IO and told the IO to take what he liked and talk to whom he liked. The Respondent provided the Note about his relationship with BW to which the IO replied, thank you and I need more. The full picture was that the Respondent provided some information; he was harried and stressed and he did not manage to provide all the information.

63.10 In cross-examination by Mr Barton, the Respondent agreed that the Applicant wrote to him on 26 July 2012 asking for a fairly extensive range of information and giving him the time of the IO's attendance and that was the first indication to him that the Applicant wanted to look at the books of account and carry out an investigation. This was not the first time that he had an investigation by the Applicant; he knew what to expect. Attached to the IO's witness statement were e-mails which he had sent to the Respondent asking for information regarding payments credited and debited to the

K75/3 ledger and there was an attachment in tabular form detailing what the IO wanted from the Respondent. The Respondent would say that he remembered seeing the e-mail from the IO and the table at the time; during the process he provided the IO with much of the information he requested. The Respondent accepted that the IO dealt with him as the sole principal of the firm and wanted him to explain for example, payments to the M School and that he was obliged to give that information to the IO, however the Respondent stated that he was not best placed to do it because he did not have day-to-day involvement. The client gave instructions to send money to a particular location which was authorised by the Respondent normally by way of e-mail and the payment was made in accordance with the instructions given by the client. It was put to the Respondent that it was not he who told the IO this and he responded that he was not in the office all the time but others in the office did respond; the Respondent had not put it in black and white.

63.11 The Respondent apologised that he had not replied to every e-mail sent to him. K75/3 was voluminous but there was a file of instructions and payments paid out from the bank statement which was all in the accounts department. The Respondent stated that he suggested they should meet the IO not least because the firm had other difficulties; the CVA had been rejected by HMRC and so he could not stop the firm going into liquidation. It was not a question of not dealing with the IO at all but not as much as he would like. The Respondent rejected the suggestion that he chose not to provide information referred to in the conversations and e-mails from the IO and HS. The Respondent accepted he had not provided the information requested for the IO's table but others in the firm did. There was an uncompleted column in the table headed "Explanation by [the Respondent] for reason for transfer". The answer to go in the uncompleted column was "authorised by the client" which the Respondent would have written umpteen times. He would need to print out the ledger, and go to the file which was a big task at an extremely difficult time. The Respondent rejected the suggestion that he realised he had a problem which was practical, serious and ethical; it did not dawn on him at all. It was put to him that he recognised the ethical difficulty and used the opportunity to delay and obfuscate by telephoning on 3 October 2012 which was noted by the IO:

> "In response to an e-mail received by Heather Seabrook, I was requested to call [the Respondent] urgently.
>
> I called him on… and… No reply to either call both went to answerphone."

The Respondent replied that on 3 October 2012, the winding up petition was presented and he was a bit "fragmented" on that day. If the IO had met him, the Respondent could have had the two bookkeepers to assist. As to HS's letter of 4 February 2013 setting out detail about what was required following the FI Report, the Respondent stated that as he had always said, he had not seen the letter until these proceedings,. His team were at the coalface dealing with instructions day-to-day and the IO was free to request a meeting and could telephone the bookkeeper JM. The Respondent did not accept that he had stopped the IO accessing the Respondent's information. He rejected the suggestion that he effectively obstructed the investigation because he knew he could not answer the questions without putting himself in professional difficulties.

63.12 For the Respondent, Ms Heley submitted that the Applicant asked the Tribunal to draw an irresistible inference that the Respondent could only have been dishonest; that he knew he had been caught and so he deliberately refused to respond to the Applicant but Ms Heley submitted that he opened his office to the Applicant and invited the IOs to speak to whoever they liked. His staff were reasonably helpful. It was interesting that there was no meeting between the Respondent and the IO after the Respondent requested one on 1 October 2012. Also there was no follow-up telephone conversation. The only document after that which was attached to the IO's statement was an e-mail of 19 October 2012 that the Respondent admitted not responding to and the Applicant intervened into the firm shortly after that. Approximately a month after the IO said he needed information and was not receiving it, the Applicant did a lot of work, the FI Report was prepared and there was preparation for intervention but no one looked for closed files. JM assumed these had been taken by the Applicant and files were taken in the intervention but no questions were asked. Ms Heley submitted regarding that the Applicant had wholly failed to jump the hurdle of the two limbed test for dishonesty in Twinsectra and was not helped by the comment of the court in Bultitude, particularly regarding the awareness of the Respondent at the time.

63.13 In evidence, the Respondent disagreed that he had looked at the IO's table and seen the payment to the M school, realised there was a problem and chosen not to provide information because it would be difficult that the explanation for someone unconnected to the firm paying in £4,030 (including telegraphic transfer fee) was that the Respondent had instructions from the client and not from the WSs. The Respondent had not seen the connection between the credit of £4,030 and the payment out of £4,000.

Determination of the Tribunal regarding allegation 1.1

63.14 The Tribunal considered the submissions for the Applicant and the Respondent and the evidence including the oral evidence. The Respondent had admitted the facts giving rise to this allegation but then in his supplemental statement he said:

> "I admit that I failed to respond substantively to 4 e-mails from the SRA dated 17 and 26 September and 3 and 19 October 2012 and, in doing so, I acted in breach of Principle 7. I am advised, for the reasons set out …below not to admit or deny the alleged breach of Principle 7 in relation to the SRA's letters of February and April 2013."

Elsewhere in the statement he said:

> "the second part of this allegation relates to letters sent in February and April 2013 to my home address. I did not see these letters when they were sent because of my personal situation at the time. The first knowledge I had of these letters was seeing them in the R5 bundle sent by the SDT… Early 2013 was an extremely difficult time for me, for the reasons outlined above. I am aware that I was not keeping up with correspondence and there is still a large quantity of correspondence which I have not been able to deal with. In the circumstances, I must admit that I failed to respond to the two letters sent by the SRA however I am advised by my solicitor not to admit or deny that this amounts to a breach of Principle 7 because I was not practising during the

> relevant period and paragraph 5.1 of the SRA Principles application provisions indicates that Principle 7 does not apply in those circumstances."

The Tribunal had heard the legal arguments for both parties about the meaning of the relevant rules. The Tribunal accepted Mr Barton's submission based on the evidence of the rules that the definition of a "solicitor" was a person on the Roll and that Principle 7 applied to the Respondent and in any event the Applicant had been trying to investigate matters when the Respondent was indisputably a practising solicitor. The Tribunal rejected Ms Heley's interpretation. The Tribunal looked in detail at the exchanges between the Respondent and the IO and HS at the relevant time. It was clear on the evidence and by the admissions of the Respondent that he did not provide the information requested in the e-mail of 17 September 2012 sent by the IO and this also applied to the e-mail of 26 September 2012. On 3 October 2012, HS sent an e-mail to the Respondent at 9.40 am and he replied at 12.30 pm that he was at home with a sick family member and asking HS to telephone him "reasonably urgently" on a given number. The Tribunal had seen a handwritten note of the IO's attempt to return this call. He had tried two different numbers both of which went to answerphone. The IO's note indicated that he left messages on both numbers. The IO e-mailed the Respondent on 19 October 2012 pointing out that neither he nor HS had heard from the Respondent in respect of the issues raised with him in the e-mail sent on the IO's behalf by HS on 3 October 2012. The e-mail also reminded the Respondent of his regulatory responsibilities. The Tribunal noted that the Respondent had admitted the facts including that if he had received the 4 February and 16 April 2013 letters, he had not dealt with them. There was some evidence of cooperation when the IOs attended the firm in terms of inviting them to come in and find what they wanted but when the Respondent was asked for specific information subsequently he did not supply it. The Tribunal had looked at the Tribunal case number 11167-2013 Austin and Sanders in which the Applicant had apparently accepted that a proper investigation had not been carried out and that an inaccurate and unreliable FI Report resulted. Austin and Sanders was quite different from the present case. Here the Tribunal had identified incidents of non-co-operation supported by evidence. It appeared that until he saw Ms Heley, the Respondent had misunderstood the investigation and the basis of the IO's approach as being around money allegedly missing from client account and that his misunderstanding led to his approach to the investigation but that did not detract from his failure to provide the substantive information which his regulator was seeking and the Tribunal found a breach of Principle 7 proved and therefore the Tribunal found allegation 1.1 was proved to the required standard.

Determination of the Tribunal regarding allegation 1.1 dishonesty

63.15 The Tribunal considered the allegations of dishonesty in accordance with the two limbed tests in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 which required that:

> "before there can be a finding of dishonesty, it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

The Tribunal first considered the objective test. It had already found that there had initially been cooperation by the Respondent but when more detailed information was sought from him it was not provided. The Tribunal was asked to make an inference that the Respondent had been deliberately obstructive and thereby was dishonest. The circumstances in which the Respondent found himself; dealing with a winding up petition in May 2012, the submission of a CVA on 25 September 2012, its rejection by HMRC on 3 October 2012 leading to winding up of the firm being granted on 19 November 2012, formed the context for the exchanges between the Respondent and the Applicant's staff. The Respondent was subject to numerous and serious distractions at the material time. The Tribunal had the advantage of hearing the evidence of the Respondent and the Tribunal did not consider that by the standards of reasonable and honest people there was sufficient evidence that the Respondent's conduct would be considered dishonest. Allegation 1.1 had failed to overcome the first hurdle established by Twinsectra and it was not necessary for the Tribunal to go on and consider the subjective test. The Tribunal did not find dishonesty proved to the required standard that is sure beyond reasonable doubt, in respect of allegation 1.1.

64. **Allegation 1.2 - In breach of Rule 22 of the Solicitors Accounts Rules 1998 and/or Rule 20 of the SRA Accounts Rules 2011 he [the Respondent] withdrew money from client account in circumstances other than permitted by either said Rule;**

64.1 For the Applicant, Mr Barton submitted that allegation 1.2 was wholly denied. The core issue in the Rule 5 Statement was lack of proper stewardship of client money by the Respondent. There was no issue that all of the money that the Tribunal had to consider was in the Respondent's client account and so that he was a trustee of that money. He was also the firm's MLRO and told the IO that he and his staff had received money laundering training. He had been admitted for around 20 years. The withdrawals which were the subject of the allegation straddled the old and new rules. Rule 22 of the Solicitors Account Rules 1998 ("SAR 1998") Withdrawals from a client account, included:

> "(1) *Client money* may only be withdrawn from a *client account* when it is:
>
> (a) Properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);
>
> (aa) properly required for a payment in the execution of particular *trust*, including the purchase of investment (other than money) in accordance with the *trustee's* powers;
>
> (b) properly required for payment of a *disbursement* of behalf of the *client* or *trust*;
> (c) properly required in full or partial reimbursement of money spent by the *solicitor* on behalf the *client* or *trust*;
> (d) transferred to another *client account*;
> (e) withdrawn on the *client's* instructions, provided the instructions are for the *client's* convenience and given in writing, or given by other means confirmed by the *solicitor* to the *client* in writing;

(ea) transferred to an account other than a *client account* (such as an account outside England and Wales), retained in cash, by a *trustee* in the proper performance of his or her duties;

(f) a refund to the *solicitor* of an advance no longer required to fund a payment on behalf the *client* or *trust*…"

Mr Barton submitted that requirements such as this had, in different guises been in place for a long time to protect client money.

64.2 In respect of Rule 22(1)(a) of the SAR 1998, Mr Barton submitted that the Tribunal would need to look at who was the client. In Rule 22(1) (a) to (e), the word "properly" was used repetitively. It was an integral requirement for compliance with Rule 22 which was designed to be a restrictive rule to protect client money. The rules required principals in firms to comply respectively with the former Code and now the Principles. Mr Barton also referred the Tribunal to Rule 20 of the SRA Accounts Rules 2011 ("SRA AR") regarding withdrawals from a client account:

"20.1 *Client money* may only be withdrawn from a *client account* when it is:

(a) properly required for a payment to or behalf of the *client* (or other person on whose behalf the money is being held);
(b) properly required for a payment in the execution of a particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;
(c) for payment of a *disbursement* on behalf of the *client* or *trust*;
(d) properly required in full or partial reimbursement of money spent by *you* on behalf of the *client* or *trust*;
(e) transferred to another *client account*;
(f) withdrawn on the *client's* instructions, provided the instructions are for the *client's* convenience and given in writing, or are given by other means and confirmed by *you* to the *client* in writing;…"

64.3 Mr Barton submitted that there was very substantially the same wording in both rules. Both sets of rules required a Principal such as the Respondent to fulfil obligations and comply with the wider rules and Principles in the Code. Mr Barton submitted that the word "properly" in Rules 20 and 22 did not simply mean that it was enough to ensure that when money was withdrawn it was properly documented. The introduction in the SRA Handbook to the SRA AR said explicitly:

"The Principles set out in the Handbook apply to all aspects of practice, including the handling of client money. Those which are particularly relevant to these rules are that you must:

protect client money and assets;

act with integrity;

behave in a way that maintains the trust the public places in you and in the provision of legal services;

> comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner; and
>
> run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

The desired outcomes which apply to these rules are that:

> Client money is safe;
>
> Clients and the public have confidence that client money held by firms will be safe;
>
> Firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard client money;
>
> Client accounts are used for appropriate purposes only; and
>
> The SRA is aware of the issues in a firm relevant to the protection of client money."

The use of the word "properly" gave it an ethical quality that required client account to be dealt with in accordance with the above Principles and desired Outcomes. Otherwise a money-laundering client could give instructions to a solicitor to pay money to whoever they wished and so long as the solicitor completed the paperwork the money would be properly withdrawn from client account even if the money was not properly required for a payment as set out in the rules. Moreover if it were purely a paper exercise none of the other sub paragraphs would apply. To accept that this was just a paper exercise was a dangerous position to take. Solicitors were expected to conduct themselves regarding client money and many other things in an ethical and proper manner. Mr Barton submitted that the introduction to the SAR 1998 was almost the same.

64.4 Mr Barton submitted that it had been asserted for the Respondent that the firm held BW's money as agent but that the Tribunal had never seen any paperwork to substantiate the existence of an agency agreement; the Tribunal had never heard from BW. Even if the submission was correct, it could not apply to the money paid in and paid out of client account by WS for a discreet purpose, school fees. The position was the same regarding K's money about which the Tribunal had not been addressed for the Respondent. What was new was the evidence that emerged from the Respondent that the initial letter to K was written on the firm's headed notepaper, that the Respondent knew of and gave approval to the letter going to K which gave that money a certain quality which could not amount to holding as agent in some way. It was the Applicant's case that on the evidence, the Respondent was not at liberty to accept BW's instructions to disburse the money; it had been paid into client account after a letter to K which the Respondent knew of. Mr Barton submitted that BW was never a client of the firm or an office holder, director or shareholder. The Respondent's case was that everything had been openly conducted on the ledger with

no attempt to hide the audit trail. Mr Barton did not take issue with that as a simple submission but it did not address inter ledger transfers which were not wholly explained.

64.5 Mr Barton further submitted that there had been a thinly veiled criticism of the Applicant's investigation. Solicitors had a responsibility as regulated individuals and the Applicant had regulatory powers which it used to protect the public and the reputation of the profession. It had been submitted that there was an obligation on the IO and HS to do all the running around on the basis that the information was there to be found but there was a balance between the Applicant's investigatory powers and the solicitor's responsibilities. The case of Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) set out that solicitors should be expected to explain themselves and this clearly applied to the Respondent.

64.6 Mr Barton submitted that integrity was not synonymous with dishonesty. Bolton v The Law Society [1994] 1 WLR 512 was an old case but sound law with its reference to complete integrity, probity and trustworthiness. Lack of integrity had a quality short of dishonesty. The allegations against the Respondent were made for professionally good reasons based on the evidence as it appeared at the stage the Rule 5 Statement was drafted when there had been no input from the Respondent.

Ledger K75/3

64.7 At the core of allegation 1.2 was the ledger K75/3. It was entitled K2C with an address in Perivale Middlesex, "Matter 3 – Other receipts". The fee earner was the Respondent and the ledger was opened on 1 March 2010 with a conflict check recorded as carried out on 24 July 2009. Time was recorded as zero. No matter file was ever produced to the IO. The K75/3 ledger had been introduced into evidence in accordance with the Tribunal timetable; it was served on time and there was a paragraph in the FI Report that said the ledger was available if required and neither the Respondent nor his representative asked for it.

64.8 The ledger commenced with a credit of £2,880 on 16 March 2010. By 14 November 2011, the credit balance on the ledger was £32.87; it therefore had a life of 16 or 17 months. By early 2011, the ledger had built up and while the credit balance fluctuated, by 22 March 2011 it was just under £31,000 and a round sum transfer from client to office of £30,000 was made on that date and a £3,000 payment to BW on 18 March 2011. Mr Barton submitted that such payments peppered the ledger. The Respondent dealt with some of the payments in his witness statement and in respect of some he readily confessed to not knowing who the recipients were, for example a payment of £5,000 on 24 April 2011 to an entity RS. The FI Report contained an overview setting out that further examination of the client ledger revealed a number of payments made from client account which the IO queried with the Respondent in his e-mail dated 3 October 2012. Mr Barton referred to the most significant payments totalling £227,635.20 which he submitted appeared to have no underlying legal transaction and which took place between 14 April 2010 and 14 November 2011. They are detailed in the background to this judgment. He referred by way of example to the first page of the K75/3 ledger. It was now known who the beneficiaries of the school fees payment to M school were; Mr and Mrs WS parents of two boys. A credit was recorded as coming in on 9 April 2010 of £4,030 with payment out on 14 April of

£4,000 to the school. The Applicant had no idea who these individuals were including whether they were clients and this was the only stage in the matter at which their names featured. There was a further school fees payment on 13 October 2010 to the L school of £2,150. The Respondent admitted this was for BW's children's school fees. It was noted that there was no direct credit entry for that payment. There had also been another payment to the L school from a different ledger A147/1 (see below). As to HNoms, to which payments were made, Mr Barton reminded the Tribunal of the links between the Respondent and his wife, and this entity. Mr Barton reminded the Tribunal of Principle 7 in respect of the IO's enquiry which was not replied to regarding K75/3.

64.9 Mr Barton submitted that the withdrawals from the K75/3 ledger were authorised by BW who was not a solicitor and not a client. It was plain that the Respondent had a relationship with BW but it was not good enough for a Principal with obligations regarding proper stewardship and to protect client money to say that it was acceptable for BW to give instructions that he and his staff simply followed, resulting in substantial withdrawals from client account. Having admitted providing a banking facility through client account (allegation 1.4), the Respondent could not easily say that the withdrawals were nonetheless proper. The withdrawals were undocumented and Mr Barton submitted that the payments identified were not characterised by the word "properly".

A3DT Ledger A147/1

64.10 Mr Barton submitted that allegation 1.2 also arose out of payments out of client account identified in a ledger A147/1. He referred the Tribunal to the letter dated 8 March 2011 from the firm to K. It bore the reference [BW] RFS A3DT040311. It seemed that BW had signed the letter. There was a further letter with the same references dated 16 March 2011 to K, again appearing to be from the firm, which appeared to be a receipt. The ledger showed K's payment being received on 15 March 2011 in the sum of £20,000 which correlated exactly with the second letter regarding receipt of the money. The ledger was described as "Matter: 1 – Investment". The fee earner was the Respondent and the ledger was opened on 3 March 2011 with a conflict check noted on the same day by RD, one of the cashiers. The money paid in by K was then paid out as set out in the background to this judgment. By 1 April 2011 all of K's money had been paid out, concluding with what appeared to be a bill posting and client to office transfers to settle the bill in the sum of £72 including VAT on 14 June 2011. Recipients of the payments included VJ and it was not known who VJ was.

64.11 Mr Barton referred the Tribunal to the history of the matter. K instructed solicitors who wrote on 27 April 2012 to the firm under the heading A3DT which they referred to as the Company, including:

> "We act for Mr [K].
>
> We have been passed a copy of your letter to our client dated 8 March 2011, together with e-mail correspondence between [BW] of your offices and Mr [K]. Copies of that correspondence are enclosed.

> We note that your letter dated 8 March 2011 states that you are instructed by the directors of the Company. However, the records at Companies House show that the directors of the Company are [K2Dirs], which is controlled by the principals in Key2Law LLP. Please would you therefore advise whether you were acting on instructions from yourself or from a third party; and, if the latter, the identity of that party. Please also confirm whether the principles of Key2Law LLP, or anyone connected to or employed by Key2Law LLP is now, or has ever been, a shareholder or officeholder in the Company.
>
> It is clear from your letter dated to 8 March 2011 that Mr [K] was invited to invest in shares in the Company, once it had been listed on a recognised stock exchange and a share price had been established…
>
> You will, of course, be aware that those funds should have been held on trust by your firm until such time as the Company was listed and the funds used for the purchase of shares.
>
> You will also be aware that the Company was struck off the register of Companies on 17 April 2012. It is therefore no longer possible for the Company to be floated on a stock exchange and Mr [K's] funds accordingly cannot be invested in shares of the Company as intended. Please therefore provide us with a cheque in the sum of £20,000, together with the interest that has accrued over the 13 months that the funds have been held on your firm's client account, by close of business on Friday 4 May 2012…"

The concluding paragraph indicated that if there was no satisfactory response, K would take any action considered appropriate including referring the matter to the Applicant and the FSA or issuing a claim against the firm but by the deadline in the letter 4 May 2012 all the money had been disbursed. Mr Barton submitted that A3DT was a company that the Respondent established having been asked to do so by BW. He changed the name of one of his off-the-shelf companies. The Applicant said that there was a direct connection to A3DT, which did not just comprise IL but also the directors of K2Dirs who were the Respondent and his wife. The other directors of K2C apart from K2Dirs were PG and MP, and PG was listed in the FI Report as one of the recipients of money from the K73/5 ledger. This was a web but the documents demonstrated that a common theme was the Respondent's connection. He was involved in A3DT and in HNoms because they were recipients of some of the money distributed to K75/3. Again Mr Barton emphasised the use of the work "properly" in Rules 20 and 22.

64.12 Mr Barton submitted that he wanted to highlight the Note which the Respondent had prepared and given to the IO about the history of his relationship with BW:

> "I first met [BW] at the Lanesborough Hotel as a result of an introduction from client, [IF]. I met [IF] there as he was discussing a new project he was looking at with another mutual contact, a Mr [MY]. This was around 2010.

The note then summarised the development of a mutual interest in undertaking CCA claims, the financial side of which featured prominently in the K75/3 ledger. There

was no suggestion that BW and Respondent knew each other before then. A business relationship quickly struck up:

> At that time, I was discussing with an After The Event insurer, [CP] of [J] setting up a scheme for funding guarantor litigation. Ultimately, that scheme did not go forward but [CP] discussed with me undertaking Consumer Credit Act Claims. He was already working with MB [solicitors] (who I know reasonably well) and was looking for another firm of solicitors to go on his panel.
>
> As I recall, [BW] was already looking himself into these type of cases. He had a contact - [T] - who was running a campaign to generate work.
>
> I cannot now remember whether I introduced [BW] to [CP] or whether [BW] had already met him. In either event, they met and [BW] was keen to take discussions forward. I believe that this time [CP] (or [J]) had a financial interest in a company that "audited" CCA claims. This was [CCS] Limited, which was run by [SH] (and his wife). …
>
> I am aware that [BW] went to visit [CCS] a number of times. [BW] tells me that [SH] was at the time in severe difficulties in that he had numerous cases from clients that he had not progressed for up to 4 years. Therefore, [BW] agreed to take some of these cases on – without paying CCS for them – to get CCS out of a hole.
>
> In due course, [BW] got the cases, I discussed with him the operation of ss. 77/78 Consumer Credit Act 1974 and the (apparent) rights of the consumers whose cases he had taken on. I also helped him with standard letters and communications for both his clients and to go to the Banks.
>
> [BW] employed a number of staff to assist him in handling these cases (and later some PPI claims). These included [PG], [MG] and [SS]. These were all employed (I assume) by [K2C]. Later, [BW] took on [DP] to help with these cases. He also took on a [SK]. She fell out with [BW] and as a consequence, we took her on as a trainee. [DP] was a similar story, and, somewhat reluctantly, we took him on as a trainee in September 2011.
>
> Once the pre-litigation process was exhausted by [BW's] team, the cases were assessed to see whether legal action could assist these clients. In the cases where there was a good prospect of improving the client's position (even if only to negotiate a lesser sum to pay) these were taken on, on a part CFA basis.
>
> I drafted a standard care pack to be sent to each of these clients. As part of the process, a file opening fee of £300 was charged. These (sic) was collected into client account on each of the client's (sic) that wished to instruct the firm. This fee was non-refundable and not conditional on outcome. As the production of these case packs would be time-consuming and to all intents and purposes an administrative process, I agreed with [BW] that his team could generate the documentation and handle the early incoming responses. Any court

> action/advice or substantive element of the case would be handled by lawyers. If any substantive document was to go out written by [BW] or his team, I was to approve first. I had access to the server remotely, but usually such documents as were sent to me were e-mailed.
>
> The business stall (sic) somewhat after the *Callery*(?) case in which the Bank successfully argued that they need not have to produce the original CCA agreement but could cobble a replica together. That rather took the wind out of the sails for [BW's] cases.
>
> For a couple of months he looked at whether there would be either an appeal and/or there was another way around the situation. In the event, it would appear that few cases are now likely to succeed.
>
> …
>
> I should add that I am not aware of any agreement between [K2]* and CCS.
>
> As regards [BW's] remuneration, he was never on the books of [K2]. He generated income from the pre-litigation part of the CCS cases and from a variety of other business interests.

*Mr Barton submitted that it was not entirely clear which K2 entity the Respondent was referring to here.

64.13 Mr Barton then referred the Tribunal to the rest of the note:

> As part of [BW's] business interests, he had got involved with a gentleman by the name of [IL]. [IL] had invented (many years ago) a projector that "threw" out a 3D image. Its potential was enormous, particularly for advertisers.
>
> [IL] was not rich. I met him once (near Oxford Circus) to be given a demonstration of the prototype. It was indeed impressive but still a bit Heath Robinson-esque. The machine needed investment to develop a far more sophisticated model before taking the product to market.
>
> [BW] was well versed in the equity markets, having worked with [IF] and others over many years. [BW] convinced [IL] that the best solution to the problem would be for him to find private investors to provide a small amount of capital (as seed funding) in return for shares in a new company (which would hold the IPR of the invention). This would enable him to prepare the business for flotation on PLUS Markets or AIM.
>
> I was asked to set up [A3DT] Limited by [BW] …- a company that he would control. In the event, I simply changed the name of one of our shelf companies (K2L 707 Limited). [BW] managed to raise £20,000 from one private investor, which he directed to be paid in to client account. He then distributed the funds.
>
> I asked [BW] numerous times for a list of shareholders and officers and the necessary details for me to issue shares and register the office holdings – e.g.

> date of birth, address, occupation, NI details and so on). I recall that at one point [BW] provided me with a handwritten list of only some of these details. I told him that it was insufficient and that he must provide me with a full and proper list. The list was never forthcoming (certainly before the company was dissolved).

Mr Barton submitted that there was a historical connection between the Respondent and A3DT. The note continued:

> As I understand the situation from [BW], he has applied to restore the company (together with its IPR) at which point he will cause the shares to be issued and continue with the process of seeking a listing.
>
> Both before and after Mr [K's] complaint, [BW] assured me that he had spoken to the relevant parties and that it had been resolved. This proved, again, not to be the case.
>
> It is fair to say that the relationship between [K2] and [BW] has now broken down."

Mr Barton commented that at that stage this was all that the Respondent had to say about his relationship with BW. He submitted that the appendices which followed the note attached to the FI Report clearly established links between K2Dirs, A3DT and HNoms.

64.14 Mr Barton took the Tribunal to an e-mail dated 18 March 2011 from the Respondent to JM in which he said:

> "Can you wire 1,500 to the Harcourt Nominees account, from the A3D ledger and let me know when it's done
>
> Charges to the client."

Mr Barton drew attention to this email because the Applicant said that the withdrawals were improper, that is in breach of the rules but also submitted that they were tainted with dishonesty and so the Tribunal needed to be sure that the Respondent had initiated the payments. There were a number of withdrawals to HNoms and it was submitted that one or all of them was tainted with dishonesty. The e-mail established a direct link between the Respondent and the payment out to HNoms, of which he was one of the company directors. Mr Barton also referred the Tribunal to the payment batch reports and e-mail exchanges relating to payments from the A3DT ledger to IL and VJ. A submission of dishonesty had been made in the Rule 5 Statement because it was right at that stage to do so but the Respondent had now provided an explanation for the payment out and it was for the Tribunal draw an inference by reference to the case of Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) that a solicitor should be able to account for and explain his actions. Mr Barton accepted that the evidential burden of proof was on the Applicant based on the case of Twinsectra but submitted that silence and the absence of an explanation, were critical in this case.

64.15 Mr Barton accepted that the documents alone did not establish dishonesty but there was an absence of explanation and inferences to be drawn from the documents about the direct way the Respondent benefited and Mr Barton submitted that dishonesty could attach even if the Respondent did not directly benefit. Mr Barton submitted that the two limbed test for dishonesty in the case of Twinsectra could apply to any or all of the payments but one should look very critically at payments from which the Respondent benefitted ultimately himself through client to office transfers or from client account to companies that he or his wife had an interest in. Neither the Applicant nor the IO had ever been provided with any documents which relate to the A3DT ledger or which resulted in debits to the K75/3 ledger. The Respondent told the IO that he had created no matter files for the K75/3 ledger which would demonstrate underlying legal transactions; it was now known that the ledger was the only document and it existed in glorious isolation.

64.16 Mr Barton submitted that the Respondent asserted that he could make payments for the convenience of the client. Rule 22(1)(e) allowed for a withdrawal from client account on the client's instructions provided the instructions were for the client's convenience or given by other means and confirmed by the solicitor to the client in writing but that was worlds apart from the situation here involving the use of client account for improper payments. Mr Barton was entitled to make a submission that the Respondent as the MLRO would have asked questions about these payments. Also while other individuals were involved in the firm the Respondent held 100% of the equity; this was the Respondent's practice and that was accepted.

64.17 Mr Barton submitted that if the Tribunal concluded that the Respondent had slavishly followed the instructions of BW and paid out monies amounting to £240,000, even if none of his actions had been dishonest this was still a serious departure from the proper standards of conduct. It was not put as an allegation of money laundering but standing back from it one did have to wonder what professional standards the Respondent brought to bear to the practice and these were serious allegations even absent dishonesty that went to his fitness to practice.

64.18 Ms Heley submitted for the Respondent that it was not her intention to criticise Mr Barton or to imply that the K75/3 ledger had been put in late but rather to highlight that when the Rule 5 Statement was issued it was not felt necessary for the ledger to be attached because the Statement only relied on a limited number of transactions. Ms Heley submitted that she was however overtly critical of the Applicant's investigation on the basis that it was surprising that the Applicant made no attempt to speak to K, IL or BW. The Applicant knew at the time of the intervention that the four e-mails to the Respondent had gone unanswered and it was a reasonable assumption that would continue if the Applicant continued to send them to the same person. The Applicant might have thought that it should go to someone else; also the intervention agent had papers and files had been sent on to other solicitors. It was the Applicant's role to take control of the affairs of the firm and it could have asked that if others found papers relevant to the intervention to inform the Applicant. This would not involve making all the running. The Applicant gave no critical thought to the matter and 18 months down the line, papers were not available to the Tribunal. The Applicant had an obligation to carry out a fair and complete investigation; Ms Heley referred to the Tribunal case of Austin and Sanders 11167-2013 heard on 8 and 9 January 2014, where it was stated:

> "Ms [B] had apparently relied on paperwork she received from [RS], the Administrators/Liquidators of the firm. However, the Tribunal did not hear any evidence from [RS]....
>
> The Applicant accepted that this Schedule had not been properly investigated by Ms [B]. She had very little contact with [RS] and did not examine the great majority of the files...
>
> The report produced by Ms [B] was therefore inaccurate and unreliable in significant in important respects..."

64.19 Ms Heley submitted that the witness JM said that lever arch files full of proper authority for the transaction existed. She distinguished the position of the Respondent from the respondent in the case of Bultitude; he had known a week before he signed the cheque for £50,000 that there was a serious financial problem and no time to solve it; he left it in the hands of others who carried out enough work to find out there were three hundred client files with debit balances, where it was needed, to establish who owned the money and 10 days later he merrily signed the cheque. That solicitor was fully aware that there was a serious problem and did not have time because he prioritised other things; he simply did not care. There was an issue of notice in Bultitude; while in the Respondent's case there was no suggestion of an overt serious problem. Even Mr Barton said that the documents did not reveal dishonesty and that the problem here was of stepping back and taking an overview; not that any individual transaction was terribly wrong. It was the evidence of JM that K2C took in credit card details which were faxed or e-mailed to JM, processed and posted on the ledger and distributed in accordance with BW's instructions, he being the controller of K2C. Mr Barton had raised the unusual nature of some of the payments such as school fees and how many payments there were over the period.

64.20 Ms Heley submitted that it was the Respondent's evidence that the firm received the funds on the K75/3 ledger as agents. Note (i)(a) to Rule 13 of the SARs 1998 stated that client money included money held or received as agent; the money had been properly received as agent for BW and so it was properly received into client account. The money was then properly paid out under Rule 22(1)(a) because it was "properly required for a payment to or on behalf the client (or other person on whose behalf the money was being held)" in that BW was such "another person". Rule 22(1)(e) stated that money could be withdrawn from a client account when it was withdrawn on the client's instructions, provided the instructions were for the client's convenience and were given in writing, or were given by other means and confirmed by the solicitor to the client in writing. The Respondent and JM in evidence confirmed that BW sent e-mails to JM requesting funds to be transferred. The Applicant has made no enquiries about who else had power to direct funds be paid out and these were paid out on BW's instructions authorised by the Respondent.

64.21 Ms Heley submitted that the definition of "proper" regarding money required for payment meant nothing other than "duly authorised". Rule 22 was not about anything other than the circumstances in which money could be taken out; it was not about underlying transactions referred to in Tribunal case no 8669-2002 Wood v Burdett; there was no other relevant authority. In that case the key allegation was that the solicitor took in cheque payments from certain individuals and immediately paid out

cash. He made no bones that there was no underlying transaction. In its judgment the Tribunal said:

> "The Tribunal considers that the way in which Mr Burdett allowed client account to be operated as a bank for the benefit of persons known to him, whether clients or members of staff, was wholly unsatisfactory and whilst not a formal breach of any written rule, to behave in that way, flew in the face of the philosophy that a solicitor maintains client account in order to protect clients' money, that money being held by the solicitor in connection with professional work undertaken by him on behalf that client."

Ms Heley submitted that the Tribunal found no formal breach of any rule in Wood and Burdett and if it was not a breach in Wood and Burdett then, it was not a breach by the Respondent. Rule 20 of the SRA AR 2011 took the same form as had Rule 22 of the SARS 1998. Ms Heley also referred to the Tribunal case number 10640-2010 of Walker and Nathan. She submitted that there the Tribunal looked at the interaction between note (ix) and Rule 15 of the SARs 1998. The judgment included:

> "The Tribunal was referred to Rule 22 of the SAR which sets out some circumstances in which payments could be made which were not related to the underlying transaction. The Tribunal noted that the three payments in issue in this case were not in compliance with the requirements of Rule 22 which, amongst other things, provided that the instructions for the transaction must be given in writing or confirmed in writing by the solicitor.
>
> The Tribunal did not consider it appropriate to offer wider guidance to the SRA and the profession on the interpretation to be placed on Rule 15. It may be that some clarification is required. Rather than trying to deal with the more general issue, the Tribunal considered the particular facts and circumstances in this case and applied a commonsense approach."

64.22 Ms Heley submitted that the money was properly in the Respondent's client account and it was not a breach of note (ix) because of the issue of frequency. She admitted that this did not only deal with the admissions the Respondent made in terms of admitting that he had operated a banking facility but allegation 1.2 was denied and allegation 1.3 and 1.4 were partially admitted on a different basis. Ms Heley submitted that allegation 1.2 was about there being no underlying transactions but Mr Barton expanded the allegation to suggest that in respect of the payments to the schools there were money-laundering issues which was not in the Rule 5 Statement. Rule 22 was about clients knowing what happened to their money and BW knew what happened. He was the only person that the Tribunal was aware of who was a client. The Applicant was in some difficulty because of lack of evidence; the K75/3 ledger was not attached to the original Rule 5 Statement but submitted in May 2014 in response to the Respondent's evidence. This was not a criticism of Mr Barton; Ms Heley accepted that the Applicant said that the Respondent could come and inspect the ledger if he wished.

64.23 In respect of the payments to schools, Ms Heley referred the Tribunal to the entries in the ledger and submitted that evidence was available in respect of M School that the payment related to a relative of WS. £4,030 came in and £4,000 went out four days

later. It was clear, that while it was improper for the Respondent to have authorised the payment that the money was paid in by the WS family and paid out for their convenience, via K75/3 presumably through the agency of BW. The payments to L school were not from any specific payment but from funds of BW. The payment was specifically authorised but the Respondent did not have the papers; they were in the possession of the Applicant and had been for 18 months. In evidence regarding correspondence from the bursar's office of one of the schools dated 23 March 2010 making a reference to BW as a "solicitor", the Respondent stated that the letter should not have said that and the Respondent stated that BW called himself a consultant when he contacted people. The Respondent hoped that he did not hold himself out as a solicitor.

64.24 As to the payments to BW personally, there was evidence that these were fees payable to BW. It was highly unlikely that he would regard his money being paid out to himself as improper or that the Respondent would treat such payment as exceptional or worrying in any way.

64.25 Ms Heley submitted that as to the payments to the Respondent or his companies made at his direction, it was the Respondent's evidence that these were also authorised by BW regarding personal arrangements between the two of them. It was not best practice but it was not dishonest; BW said that the Respondent could take the payment and that he knew that the Respondent was taking it. The Applicant had a real problem in asserting that anything that the Respondent did was dishonest. In respect of the transfer of £30,000 on 22 March 2011 from client to office account, Ms Heley submitted that clearly no bill had been posted and there was no completely satisfactory explanation as to why it was made. It was noted by the IO as an office credit for the next six months. There was no subterfuge or suggestion of something hidden nor was there a false audit trail.

64.26 Ms Heley submitted that the Respondent gave evidence that he could not possibly conceive why the allegation was made that there was a hole in client account when it balanced to the penny every month. Accounting structures were in place; 2.5 staff worked in the firm's accounts department. The firm had experienced and reputable auditors to conduct the Law Society accountant's reports and but for the intervention, the Respondent would be able to put forward a lot more evidence regarding compliance but he had no access to the papers for 18 months.

64.27 Mr Barton had suggested that the Respondent as a diligent solicitor should be aware and have made enquiries about whether BW's requests were inappropriate and should not slavishly have followed his instructions and because of that Mr Barton asked for an inference of dishonesty. Ms Heley submitted that there was a lot in the Respondent's cross-examination based on the assertion that he did not know or care. Mr Barton talked about the ledger generally. It was opened in March 2010 and was relatively innocuous at that point. There was a payment in and payment out to a barrister. The ledger closed in December 2011 approximately 19 months later. This was the period of time during which, on the Respondent's evidence he had an 18 day trial in the High Court and which was a matter of public record. The only relevant extract in the Respondent's statement was the Judge's summing up and his favourable findings in respect of the Respondent's evidence. Ms Heley also referred the Tribunal to the medical evidence particularly the report of the Respondent's GP dated 21 April

2011 which was written right in the middle of the time when things were "taking off". This was plainly contemporary evidence that the Respondent was suffering from significant problems with anxiety and drinking heavily and that he was being referred to a psychiatrist. There was then a letter from his GP to a consultant psychiatrist dated 6 May 2011 referring to a history of significant stress and his being a heavy drinker. On 10 May 2011, a consultant psychiatrist wrote to the GP. He had been overseeing the Respondent's care for some time and described the Respondent as having "gone off the rails with alcohol over the past few months". He referred to the Respondent as presenting with low mood and anxiety as the primary complaints and that he had been struggling with personal issues. This was the first time that the Respondent had seen a doctor for some time as could be seen from the summary of his attendances on his GP. Against that background the Tribunal was also asked to consider a note on the significant health problems of a close family member which had been increasing throughout the period culminating in August 2012, the date of the Respondent's first meeting with his GP and September 2012 which was also the time when the CVA was put in. The Tribunal asked about the Respondent's alcohol problem and was advised that it had been going on for the past 15 years. He told the Tribunal that although he had a problem with alcohol, at times drinking 150 units per week, he had been able to function at work. However, the alcohol problem was exacerbated by the events around the High Court hearing which also led to him suffering from anxiety and depression.

64.28 Ms Heley submitted that the matter of K's money had not been specifically addressed by the Respondent because it was not a separate issue in respect of the disputed allegations. She would say that it was evident from contemporary correspondence that BW was sending to K at the time that no conditions were attached to the money; there was no escrow account and BW was asserting ownership. She referred the Tribunal to an e-mail from BW to K and IL on 20 May 2011 to that effect.

64.29 In evidence, the Respondent stated that the money in the K75/3 ledger belonged to the client K2C and that the firm was given authority to accept funds by BW. The Respondent had said that when JM contacted him to authorise payment he would say "Yes" or "No"; he was asked by the Tribunal for an example of when he had said "No" and he could not, stating that if it had happened it would not show in the ledger and JM would not have kept related e-mails.

64.30 In respect of the credit card payments, the Respondent stated that he was responsible for the arrangement but did not run the banking; he did not know how the credit card payments were taken; the Respondent had people to do that for him. He agreed that he had discussions with BW about how people would give credit card details and pay money into his firm and that presumably he and BW went through the process of understanding the mechanics in outline and he understood how the money went into client account.

64.31 The Respondent testified that he did not know why BW/K2C did not hold the money rather than having the firm hold it as agent, but he agreed that it provided considerable comfort to people because they felt a solicitor would deal properly with their money and that it would be safe. He knew that K2C had a bank account because payments out were made to K2C and it had no reason not to have one. The Respondent did not recall whether he had discussed with BW why the client account was repository for

these payments and not BW's account and he did not think that ledgers K75/1 and K75/2 operated in the same way as K75/3. The Respondent confirmed where he stated in his supplemental statement:

> "As we were acting as agent for [K2C] and providing advice and assistance, I took the view that [K2C] was our client. I believed that monies we received from third parties in the course of our work for [K2C] was properly client money as it had been received by the firm in its capacity as an agent. I didn't really turn my mind to the question of the underlying transactions at the time however I would say that they were the ongoing advice and assistance which we gave to [K2C] as it could call on us at any time."

Mr Barton put it to the Respondent that in giving evidence he said that he had turned his mind to how the money was being held but in his supplemental statement he said that he did not. The Respondent replied that he said in the statement that he did not think that the set up was such that he was providing facilities and he did care; monies were only sent with the instructions of BW and only to coordinates that he gave.

64.32 As to its being no accident that the names of the firm and K2C were similar, the Respondent stated that K2C dealt with pre-litigation cases; if any cases qualified they would move to the firm but the clients were free to go anywhere they liked. In his supplemental statement, the Respondent said:

> "I worked with [BW] to devise a standard case pack which would assist in ensuring that such bulk work was progressed efficiently. It was agreed that Mr [BW] would take on the caseload through a company which he called [K2C]. The company was called [K2C] because it was intended that Key2 Law and [K2C] would work closely together to provide a seamless service to [K2C's] clients. The firm would act as agent to conduct any litigation which was necessary or provide advice and assistance to progress cases which were non standard."

The Respondent also said:

> "As explained in my original note, [BW's] team conducted only standard "prelitigation" work, as soon as any case appeared to require more substantive input [K2C] sought advice and assistance from [the firm]. [The firm] was acting as agent and did not have a separate retainer with the underlying client. Full client files therefore remained with [K2C]. We maintained a general file containing relevant correspondence and individual wallet files containing client specific information…"

In his supplemental statement, the Respondent also said:

> "I deeply regret that I took Mr [BW] at face value and did not make more substantial enquiries. I note Mr Page's assertion (at paragraph 14 of his witness statement) that Mr [BW] was never a client. It is true that we did not act for Mr [BW] personally but we believed him to be the controlling mind of [K2C] and [A3DT]. I accepted his instructions on that basis."

The Respondent stated that knew BW to be the controlling mind; it was stronger than a belief.

64.33 As to whether it was proper to pay solicitor's fees from money coming into client account from members of the public making credit card payments to the firm, the Respondent stated that he had not questioned whether it was right; this was money collected for BW's company, he was the client and he directed payment.

64.34 In respect of the fees paid to M School for Mr and Mrs WS, the Respondent was unaware at the time who the sender of the money was. He believed the WSs were UK resident and he did not know of any relationship between them and BW. Mr WS provided IT support to BW's business but was not employed by him. The Respondent confirmed the WSs were never clients of the firm and that he did not know that the payment to M school was in respect of their children, he assumed it was for BW's children. He could not remember asking or having a conversation about it but BW would have instructed the payment to be made. He did not turn his mind to it at the time; in his mind it was client's money and the client was under pressure from the school to make immediate payment. It was not wrong to do it if the client urgently needed this payment; it looked like the beginning of a new term and the Respondent was only being helpful.

64.35 In respect of a payment on 13 October 2010 to L school of £2,150, the Respondent stated that he now knew that this was for BW's children. As to whether he checked at the time, he stated that he knew he was paying the school and assumed it was for BW's children. The Respondent wished that he had told BW that he would have to do it himself; he did not because he was helping the client. It was the client's money and the client's instructions and the firm was not entitled to hold it. As to whether he questioned the propriety of the payment as an appropriately trained MLRO, the Respondent stated that clearly there was no criminal activity; he knew who the client was and had carried out money-laundering checks back in 2009. He confirmed the issue was in his mind at the time and in respect of the length time he knew BW this was well into 2010 and the file was opened in 2009. Even if he only have known him for two months and BW needed it paying urgently he would have paid it. Generally the Respondent rejected the suggestion that BW could dip into the ledger whenever he wanted to because he was not a signatory to client account. The Respondent agreed that he knew that as Principal he held the money as a trustee of client account and had obligations for proper stewardship. He rejected the suggestion that he blindly accepted BW's instructions because he was the client and those were his instructions. The Respondent agreed that on the basis of the evidence he had paid BW around £108,000.

64.36 The Respondent agreed that K2C was his client and that BW strictly was not but the Respondent regarded BW as entitled to money coming from members of the public to K2C because he was the controller and effective directing mind of the client. The Respondent rejected the suggestion that people paid the firm to pursue claims; the money was paid for K2C to do pre litigation work but he agreed that it was in the firm's client account. He also rejected the suggestion that he had a duty to those people because it was not their money; they paid it to the firm as a fee to K2C. As to how he satisfied himself that that was the case, the client BW told him that was the arrangement; the people instructing K2C contacted the firm's office. It was obviously

a payment to K2C and so it went into the K2C ledger. The Respondent had not really ever been concerned about the propriety of the payments because BW was the client and it was his money.

64.37 As to a credit of £10,000 from BW on 25 October 2011, the Respondent stated that this was to cover an enormous number of credit card charge backs. That sum along with a number of receipts on 28 October 2011 from PG and a company DR Ltd totalled £24,995 and a payment out totalling the same amount to HNoms on 31 October 2011 roughly correlated, the Respondent suspected, to what BW had to refund in respect of charge backs. These arose when individuals decided they did not want the service from K2C or another family member questioned why they were trying to "wriggle out" of the credit card debt. The company would tell the firm that the cardholder disputed the payment and that the money would be clawed back. This became regular and the Respondent was paying it out of his own pocket to cover client account. There was a running account with the credit card company. The Respondent had insisted that BW as controller and owner of K2C put the money back. Mr Barton asked how the Respondent checked that it was proper to make these reimbursement payments and the Respondent replied that BW authorised them. BW worked out the charge backs and put them back in and so the Respondent could return money back to HNoms. The Respondent knew of the entitlement but he did not deal with the amounts; BW had the ledger all the time. The Respondent assumed that the two bookkeepers would e-mail Excel spreadsheets whenever BW wanted them. The Respondent did not "do the maths" regularly; he would have relied on the fact of the client remembering, BW was not likely to overpay; that was not something clients did. The Respondent could not remember whether he checked himself. If HNoms "miraculously" received £25,000, the Respondent stated that he must have checked at the time that it was entitled to the money.

64.38 The Respondent gave evidence about payments to an entity C21 from the K75/3 ledger. C21 was also referred to in a letter of complaint that CCS made to the Applicant on 30 April 2012 about the firm which stated that payments to C21 were to be processed through the firm's credit card terminal. The Respondent stated that he did not have referral arrangements with C21 or CCS. What led to the repeated payments to C21 was that BW told the Respondent that this was money that BW owed C21. These were simple trade transactions and there was no question in the Respondent's mind that criminal money was coming in. BW was paying for example for [CCA] audit fees and this was not suspicious at all. It fitted entirely with the business nature of K2C. There were thousands of payments out and he had three trained legal cashiers. On any Friday around 15 property purchases would be going through; would he be expected to check the conveyancing to see if money which was being paid to the right mortgage company? He accepted he made mistakes but there was nothing to suggest to him that he should be on enquiry because he was paying to another company that dealt with CCA claims.

64.39 Regarding payments made to the Respondent and to the firm's office account, in respect of a payment of £30,000 made on 22 March 2011 by a transfer from client to office account, the Respondent could not remember but it was near enough a year in and he suspected that it was an annual fee for general advice although the Respondent noted no bill or VAT was posted. It looked like 100 times £300; the Respondent suspected that was how it was arrived at. It would be for work undertaken mostly by

the Respondent because he had expertise in consumer credit. As to what steps he had taken to check it was proper; it was paid because the client said to do so.

64.40 Regarding A3DT, the Respondent was asked about the letter of 8 March 2011 sent to K. The Respondent stated that it was a Word document and BW would have taken the firm's logo from another document. He should not have used the firm's logo but the Respondent disagreed that with the use of the word "fabricated" or "forgery", rather it was constructed by BW. The signature looked like his [BW's]. The reference RFS was the one the Respondent used but A3DT was not one used by the firm. BW had e-mailed the body of the letter to the Respondent and the Respondent confirmed that he knew that the letter was going out around 8 March 2011. He did not think he replied in writing to the message; he suspected that he read the text on his BlackBerry and that the Respondent had said that he could see what BW was trying to do and so to send it. He thought he broadly approved the text. Broadly he was aware that the deal was about to happen and he was happy with it. The content of the letter concerning the deal was as the Respondent expected it to be put to K. The address used was K2C's. The Respondent did not know that BW was writing the receipt letter dated 16 March 2011 sent to K again using the firm's logo, but he confirmed he knew the money was in client account. BW might have said that he would drop a note to K. In respect of the complaint letter sent by K's solicitors on 27 April 2012, the Respondent thought that he was aware that there was an issue because BW would have told him that there was. He confirmed that he saw the letter when it came in. He telephoned BW straightaway and said to issue the shares if he could or at least to get this sorted out. As to the possibility of refunding the £20,000 to K, the Respondent stated that BW said that K was not entitled to it because he had paid it unconditionally; BW said it was all in hand and the Respondent confirmed that he was content to accept what BW said. K's solicitors did not write to the Respondent again and it all seemed to have calmed down. The Respondent did not know whether he had replied to K's solicitor's letter of 27 April, by a short letter acknowledging it. A matter file had been opened but the 8 March letter was not on it.

64.41 The Respondent agreed that he had authorised payments shown on the ledger including £1,500 to HNoms on 18 March 2011 after K paid £20,000 in on 15 March 2011. He did not know why it went to HNoms; it was not his personal account. It was a payment due to him for setting up A3DT and advice regarding the matter going towards listing the company and the IPR rights. There was not a bill from the firm so it was not on the ledger. He personally/HNoms provided the services. He agreed A3DT was a client of the firm and he was shown as the fee earner. He was providing company secretarial services in a personal capacity rather than legal services. He did the early running around for BW. He did not know exactly what he did for the £1,500 but that was his guess about the £1,500. The money was taken from client account on the instructions of the client. BW owed him that money. As to why IL received £4,750 and two more payments, IL was the main owner of the A3DT business, the inventor and he was transferring the IPR into the business so it was not surprising that he received the payment. The Respondent probably would have asked why IL got the money at the time. The Respondent stated that he knew that IL spent the money sent to him on building the next version of the prototype. The Respondent did not know who VJ was; he must have been involved in the project as he was paid the same day as IL. The Respondent could not recall at this distance if he had checked. The client was A3DT and BW gave the instructions.

64.42 As to K2Dirs being a director of A3DT, the Respondent testified that it was a nominal director to incorporate the vehicle, then the form would be sent to Companies House to appoint new directors and K2Dirs would resign. BW and IL were to be the directors. BW was supposed to do it but he did not and the director was left as K2Dirs.

64.43 As to why school fees had been paid out of this ledger to L school, the Respondent presumed this was because BW's money was available on the ledger. The Respondent did not understand Mr Barton's suggestion that he should have been inquisitive about the payment of school fees from two different ledgers. A3DT was BW's company; the Respondent had set it up and sold it to him and BW had released £20,000 of shares to Mr K. The Respondent stated that he should not have let it be used as a banking facility but he was instructed to send money to the school. As to whether as MLRO such instructions should have concerned him, the Respondent stated that it was just a case of money coming in and going out. There was an underlying legal transaction; they were developing a product with a view to listing the invention. In respect of the payment to the charity D, BW had some connection with it.

64.44 The Respondent was asked about the inter ledger transfer followed by payment to IL of £2,250. The Respondent thought that this might have been an inter-client loan. As to his being on enquiry as the firm's MLRO, the Respondent stated that he was and he considered the transfer as he approved it. In respect of the inter-ledger transfer which ended with a payment to ST, as to whether the Respondent checked with anyone whether it was proper to make the payment of £13,000 to her, the Respondent stated that he was authorised by the client to send it and so he sent it where they told him to. He suspected that he would have known at the time that she was BW's girlfriend.

Determination of the Tribunal in respect of allegation 1.2

64.45 The Tribunal considered the submissions for the Applicant and for the Respondent and the evidence including the oral evidence. Allegation 1.2 covered the matters undertaken by the firm for K2C, the A3DT matter involving K and inter ledger transfers. The Tribunal had to determine various issues including what the word "properly" meant in Rule 20 of SRA AR 2011 and Rule 22 of the SAR 1998, to consider the agency position under which the Respondent asserted he operated in respect of the K2C matter and whether BW was a client. The Tribunal accepted the meaning of the word "proper" in both Rules 20 and 22 proposed by Mr Barton. It clearly went beyond ensuring that financial transactions were accurately documented and not only was this the commonsense position because a very limited interpretation would deprive the Rules of any effect in protecting the public but it was also clear to the Tribunal from the wording used particularly in the Introduction to the SRA AR 2011 quoted by Mr Barton.

64.46 The Tribunal found the credit card holders to be clients of the firm who had paid money to the firm for services they expected to receive; their money went into a solicitor's client account and people would not understand correctly who they were dealing with; they would think there was one large K2 organisation and that they were paying for a service that they thought was legal in nature or would be a legal service at some point. When individual members of the public paid money in by credit card, the only audit trail was to the firm; they thought they were paying a firm of solicitors

and so if they made a claim they would be able to get recompense from the Compensation Fund. The Respondent should have opened individual client accounts for these people if he felt he needed to hold money for them at all.

64.47 The Tribunal found K2C as a matter of fact to be the firm's client and that BW was not a client. BW was not even a director of the company K2C and while the Tribunal noted that the Respondent regarded him as its controlling mind, BW had no legal standing to give instructions on the company's behalf on the evidence which the Tribunal had seen. The Respondent had said in evidence that there was no physical client matter file for K75/3. Ms JM one of the cashiers kept her own accounts file and lever arch files of the accounts documentation relating to the numerous transactions made on credit cards but that was all there was in terms of documentation. The Tribunal incidentally noted that on a couple of occasions the Respondent had paid K2C rather than BW but according to the evidence of the Respondent all payments were made on BW's instruction.

64.48 The Respondent admitted the facts giving rise to allegations 1.3 and 1.4 (see below) but asserted that he and the firm were acting as agent for K2C. In that connection, the Respondent had performed set-up work for the pre-litigation process which K2C operated, by providing a pack and said that he was constantly giving BW advice in general terms. He could have done that independently of dealing with the payments and set up a dedicated file for advice-giving but he did not do so and there was no evidence that such advice was being given. The Tribunal noted that on the Respondent's evidence, it was BW who decided when to pay the firm and what it should be paid and that no bills were generally raised. On these facts the Tribunal did not consider that the Respondent was a solicitor acting as an agent because he was not doing anything as a solicitor, for example holding money in escrow for another solicitor. What he did was to provide an office, staff and a credit card terminal.

64.49 In respect of authorizing payments from the K75/3 ledger, the Tribunal found that even if BW had been a director of K2C rather than a "controlling mind", only K2C as the client was entitled to any money paid out. Normally a solicitor would require a resolution from a meeting of directors setting out what the company was going to authorise before making any payments. The directors of K2C were G, P and K2Dirs and this was evidenced by a company search. The Tribunal accepted what the Respondent said about the role of K2Dirs and his providing shelf companies to clients. It also accepted his evidence that BW and IL were supposed to take over as directors and that the Respondent genuinely believed that he did not have a personal interest in K2C. However money received for the company should have been held in trust by any director for other directors and it should not have been paid by the firm to anyone but the company K2C. Receiving instructions from BW to make payments and acting on those instructions could not be proper without a resolution from K2C. BW was neither a solicitor nor a client and being a controlling mind was not enough. Furthermore he did not come within the definition of "other person "in the rules because the money was not properly required for a payment to or on behalf the client K2C or on his behalf. The fact that the Respondent might have thought that BW was a director did not help the Respondent because the firm should not have been making payments to anyone other than K2C without authority in any event.

64.50 Accordingly the Tribunal found that any payments that were not made to K2C were not proper payments. Payments to the Respondent or the firm were improper because no bill had been raised. The payment of £30,000 which the Respondent said was to cover credit card charge backs arising when a credit card payment was reversed was improper because the charge backs applied to the firm and not to the Respondent personally. The Tribunal found that the payment made to C Marketing from the K75/3 ledger was also improper and the money should not have been in K2C Ledger in the first place. In summary the Tribunal found that the transfers made from the K75/3 ledger including payments to office account, to the Respondent, to HNoms which the Respondent owned and to CB a company of which his wife was a director as well as payments to schools and payments of over £108,000 to BW were improper in themselves because the instructions to make them did not come from the client K2C. **The Tribunal found allegation 1.2 involving breach of Rule 22 of the SAR 1998 and Rule 20 of the SRA AR 2011 proved to the required standard in respect of the K2C transactions.**

64.51 In respect of K and A3DT, the Tribunal found that A3DT was the client. The director of the company was K2Dirs, of which the Respondent and his wife were themselves directors. There was no other director. It was not disputed that BW had never regularised the position in terms of registering those individuals who the Respondent expected to become directors. The Respondent again said that BW was the controlling mind but there were no resolutions or board minutes authorising payments to anyone other than the company A3DT. The Tribunal did not consider that the Respondent had exercised any proper stewardship regarding the money held in the client account for the company A3DT and while K was not a client, no protection was afforded to him by the fact that he had paid his money into a solicitor's client account which he had been expressly asked to do. The Respondent admitted in evidence that he saw the contents of the letter which went to K dated 8 March 2011 setting out the terms upon which his money was to be paid into the firm's account and the Respondent approved the contents even though according to his evidence he did not approve it being sent on headed notepaper. The Tribunal found as a fact that the Respondent must have expected the letter to be sent from firm but not from the false address in Perivale which was that of K2C. K was not a client but it was clear from the contents of the letter which the Respondent approved, including the words, "We act for the above named company as corporate solicitors and can confirm the following details for your information…" that the firm had a duty to K because the firm was effectively holding £20,000 to his order pending the conditions in the 8 March 2011 letter being fulfilled. The Tribunal found that the payments which completely disposed of K's money over a very short period 13 March to 11 April 2011 were improper because instructions did not come from the client A3DT and they were made in breach of the firm's duty towards K. The Tribunal noted that IL was said to be the inventor of the item which was the subject of the A3DT venture and that the Respondent said he regarded IL as the main owner of the company, but IL was not a director and in any event the payments to him were unauthorized by the company. **The Tribunal found allegation 1.2 involving breach of Rule 22 of the SAR 1998 and Rule 20 of the SRA AR 2011 proved to the required standard in respect of the A3DT transactions.**

64.52 In respect of the inter ledger transfers, the Tribunal also considered to be improper the payment of around £13,000 from the K75/3 ledger into the A3DT ledger after all K's money had been paid away, which was then paid out to someone whom the

Respondent believed was a girlfriend of BW at the time. The payment did not come within any of the requirements of Rules 22 or 20 particularly because neither K2C in respect of the K75/3 ledger nor A3DT in respect of the A147/1 ledger had authorised the transfers. The Tribunal found that this also applied to the payment made to IL which emanated from the K75/3 ledger. Allegation 1.2 was found proved to the required standard in respect of it. **The Tribunal found allegation 1.2 involving breach of Rule 22 of the SAR 1998 and Rule 20 of the SRA AR 2011 proved to the required standard in respect of the two inter ledger transfers.**

Tribunal's determination in respect of allegation 1.2 dishonesty

64.53 In respect of the transactions on the K75/3 ledger, the Tribunal considered that the fact of money being paid away without question at the direction of someone who was not even a director of the claims company K2C and who had no authority from the company, following the receipt into client account of payments into the ledger from numerous members of the public who believed that they were making a payment to a solicitor in return for which work would be done, would be considered dishonest by a reasonable and honest person according to the objective test in Twinsectra.

64.54 In respect of A3DT, the Tribunal did not attach any significance to the fact that the Respondent had a lot of shelf companies on hand with his wife as the company secretary and did not find the initial set up of A3DT in itself to be improper. This was not an uncommon methodology for corporate lawyers. However money had been paid in and dissipated within a month without any steps being taken to move the listing of the company further forward in accordance with the terms under which K paid his money into the firm's client account. The Tribunal considered that the authorisation of the disposal by way of various payments of the £20,000 paid into the firm's client account by K would be considered objectively dishonest by a reasonable and honest person according to the objective test in Twinsectra.

64.55 The Tribunal also considered that the manipulation of the K75/3 and A147/1 ledgers by way of inter ledger transfers resulting in unauthorised payments out to be dishonest according to the objective test in Twinsectra.

64.56 The Tribunal then considered the subjective test which involved considering whether the Respondent realised that by the standards of reasonable and honest people his conduct was dishonest. The Tribunal was asked by the Applicant to accept that the known facts were consistent only with systematic dishonesty. The Tribunal accepted the Respondent's evidence that he trusted and respected BW and thought he was honest. In evidence the Respondent described BW as having a charming and charismatic personality and the Tribunal found from his oral evidence that he was in thrall to BW. In respect of the K75/3 matter, the Tribunal found that until 23 May 2014 when he took legal advice, the Respondent genuinely believed that the money in his client account was accounted for. At the time this matter was on going the Respondent was distracted by litigation in which he was personally involved, had a significant problem with alcohol and had considerable issues in his personal life. The Tribunal found the Respondent's first witness statement and his response which had been drafted without the benefit of legal advice useful as an indication of his state of mind. He had a genuine belief that the money was there but that the Applicant could not see it. The Tribunal had regard to the case of SRA v Waddingham, Smith and

Parsonage [2012] EWHC 1519 (Admin). Applying the subjective test in that case, the Court had said:

> "moreover, the Tribunal was quite right to refer repeatedly to the criminal standard of proof, which applies just as much to the drawing inferences as it does to the resolution of factual disputes."

and later:

> "a decision as to whether or not someone has acted dishonestly will very often be made by drawing inferences from the facts that are found (where they are disputed) or agreed (as in this case).It would be impermissible in my view in a case to which the criminal standard of proof applied to infer that the person accused had acted dishonestly without being sure that he had done so."

The Tribunal was satisfied that the Respondent thought that what BW was doing was acceptable and as in the Waddingham case never took steps to cover his tracks and had good character references. The Tribunal did not consider that the subjective test in Twinsectra had been satisfied respect of the Respondent's conduct regarding the K75/3 ledger and the K2C matter. **Accordingly the Tribunal found dishonesty was not proved to the required standard in respect of the K75/3 and K2C matter and allegation 1.2.**

64.57 In respect of the A3DT matter, again the Respondent did not cover his tracks and placed the same faith in BW in respect of the payments out from the A147/1 ledger as he did in respect of K75/3. The Tribunal had noted that the trigger signs to alert the Respondent should have been all the stronger in this matter because the Respondent knew the terms upon which K had paid the money into client account but as in the K75/3 exercise he was so much in awe of BW that he accepted what BW said. In respect of the payments to IL the inventor, the Respondent had given evidence that he thought the payments were going to improve the invention so that it could be brought to market. In respect of the other payments out of the ledger, however potentially improbable, he also believed that the money belonged to BW and the Respondent was so taken in by him that he did not question the payments. He also believed it when BW said that he would sort the matter out after K's solicitors complained. Again the Tribunal did not find the subjective test for dishonesty satisfied to the required standard in respect of the A3DT matter. Accordingly the Tribunal could not be satisfied to the required standard, that the Respondent had been dishonest according to the subjective test. **The Tribunal found dishonesty was not proved to the required standard in respect of the A3DT matter and allegation 1.2.**

64.58 The Respondent gave evidence that so far as he was concerned BW was effectively both K2C and A3DT and this made the otherwise inexplicable transfers between the ledgers explicable. The same considerations regarding the subjective test applied as in respect of the other two heads of allegation 1.2. **The Tribunal found dishonesty was not proved to the required standard in respect of the inter ledger transfers and allegation 1.2.**

64.59 The Tribunal did not find dishonesty proved to the required standard in respect of any aspect of allegation 1.2.

65. **Allegation 1.3 - He [the Respondent] permitted money to pass into and out of client account when not accompanied by the conduct of a legitimate underlying legal transaction and thereby breached all or any of Rules 1.02, 1.03 and 1.06 of the Solicitors Code of Conduct 2007 and/or note (ix) to Rule 15 of the Solicitors Accounts Rules 1998;**

Allegation 1.4 - On or after 6 October 2011 in breach of or any of Principles 2, 3, 6 and 10 of the SRA Principles 2011 and/or Rule 14.5 of the SRA Accounts Rules 2011 he [the Respondent] provided banking facilities through client account by making payments into and transfers or withdrawals from client account that did not relate to underlying transactions or to a service forming part of his normal regulated activities;

65.1 Mr Barton submitted that the SRA Principles 2011 and the SRA AR 2011 came into force on 6 October 2011, hence the issues being covered by two allegations. There were receipts and payments on the K75/3 ledger post-dating the change including receipts totalling £24,995 from BW and others including PG, and two payments out to HNoms totalling the same amount. The Respondent admitted allegation 1.3, breach of Rules 1.03 ("You must not allow your independence to be compromised") and Rule 1.06 ("You must not behave in a way that is likely to diminish the trust the public places in you or the profession") and/or note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 [which set out that in the case of Wood and Burdett case number 8669/2002, the Solicitors Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account.] He denied breach of Rule 1.02 of the Code (You must act with integrity). The Respondent admitted allegation 1.4 in part, breach of Principle 3 (not allow your independence to be compromised), Principle 6 (behave in a way that maintains the trust the public places in you and in the provision of legal services) and Rule 14.5 of the SRA Accounts Rules 2011 which provided:

> "*You* must not provide banking facilities through a *client account*. Payments into, and transfers or withdrawals from, *a client account* must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of *your* normal regulated activities."

He denied breach of Principles 2 (You must act with integrity) and 10 (protect *client* money and *assets*)". The Respondent also denied dishonesty in respect of both allegations.

65.2 In the Rule 5 Statement, the Applicant relied on the fact that the IO identified a significant number of payments out of client account and inter ledger transfers that were not accompanied by an identifiable legal transaction and to establish the facts upon which those allegations were based, the Applicant relied on the FI Report and the inter ledger transfers facilitated by the use of the A3DT ledger A147/1 so that following a transfer from K75/3 to A147/1, IL was paid £2,250 on 8 April 2011 and a

payment of £13,000 was made to ST on 20 April 2011. It was submitted that the transfers to A147/1 did no more than enable the payments to be made because by the date the payments were made, all K's money had been disbursed and the payments would otherwise have rendered the ledger overdrawn. Mr Barton submitted that the quantity of payments out, as demonstrated by the 75 page ledger K75/3 evidenced the use of client account to provide banking facilities for the persons identified.

65.3 In the face of the Respondent's denials of breaches of Rule 2, Principle 2 and Principle 10, Mr Barton relied on the principles in Bolton v The Law Society [1994] 1 WLR 512:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness…"

Mr Barton submitted that the Respondent positively advanced in his defence that he had followed instructions from BW which was not consistent with the application of the professional duties required in Bolton and thereby the Respondent demonstrated a lack of integrity. He was charged with a duty under the SRA AR 2011 to look after client money. There was not one iota of evidence that he stood back and asked himself if it was right to make payments, sometimes to organisations he did not know. Mr Barton submitted that these actions made good a breach of Principle 10. JM would say that BW was rude and demanding but that did not matter. If a solicitor was holding client money in client account he was expected to be sufficiently robust to protect it particularly if he was a sole practitioner and therefore also the firm's MLRO. A solicitor could not set his own standards; Twinsectra did not allow it. Nor could a solicitor make a decision to turn a blind eye; that would also constitute dishonesty.

65.4 Mr Barton submitted that it was telling, if all the transactions were legitimate and above board, that there was no evidence to support them including from BW. Mr Barton submitted that these were not above board transactions. Even if the Tribunal was not satisfied that the Respondent was dishonest, these were serious allegations that went directly to fitness to practice. The extent of the facility afforded to BW was remarkable and Mr Barton put the allegations even absent dishonesty at that very high level.

65.5 In respect of allegations 1.3 and 1.4, Ms Heley submitted that the Respondent made admissions including that he had operated a banking facility and accepted that it was a serious breach of the rules and that in doing so and in following BW's instructions without enquiring more than he did, the Respondent had compromised his own independence. The Respondent did not admit that he had demonstrated a lack of integrity and Ms Heley submitted that integrity and honesty were quite similar concepts which were intrinsically linked. The Respondent got things wrong but he did so with the best intentions with the knowledge he had at the time. In order to establish lack of integrity, the Applicant should be able to support the allegation with strong evidence but did not have any. With particular regard to allegation 1.4, a breach of Principle 10 of the SRA Principles 2011 had been alleged which required the Respondent to protect client assets and funds. There was an assumption of a hole in client account, as an asset which the Respondent had failed to protect but Ms Heley

submitted that on the evidence this was not made out. The Respondent clearly had procedures in place and if he made mistakes they were in the honest but mistaken belief that the funds belonged to BW and there was no evidence that they did not so belong. The most the Applicant could put forward was an assumption and this was not enough.

65.6 In evidence, the Respondent stated that he now knew there were breaches of the rules but he had two part-time bookkeepers trained in solicitors' accounts and a monthly management accountant. When the IO asked to see the K75/3 ledger it caused a little bit of dread because of the detail but he had annual accounts every year and it was not just the Respondent who allowed the error to occur. He put in place systems and people to look after the records although he accepted that the buck stopped with him. It appeared that there had been breaches by allowing banking facilities to a client and the Respondent had accepted this on the first day of the IO's investigation. The Respondent attributed the error to whoever booked in those transactions; the firm's auditors should have spoken to the Respondent and Mr E (another member of the firm) and told them that they were getting it wrong.

65.7 Regarding the use of K2 in the names of the various entities, the Respondent stated that one of the difficulties of a new business was coming up with a name. BW asked if he could use K2 and the K2 logo for ease. Possibly the Respondent had felt there was some advantage in having the same element in the name. He hoped that BW could pass clients on from K2C to the firm. As to why the Respondent felt the need to take on CCA work; he was impressed because MB solicitors were happy to do it. The Respondent had done a lot of bulk debt collection for insolvency practitioners and asset-based clients. CCA work was more complex but the Respondent felt that the firm could easily handle it with relatively low-grade fee earners and it would be profitable for the practice. It did not prove to be profitable because the firm did not get enough of the pre-litigation cases coming in and also at that time the litigation against the Respondent was commencing and he was not completely on top of everything; with more hands-on attention it could have been made a success. The work never turned into the bulk litigation the Respondent had hoped for; it turned into a nightmare. As to why BW did not work independently on the pre-litigation stage, the Respondent stated that he could have acted independently; they had very early discussions about getting litigation funding from insurance companies and building something great for both of them. As to how the Respondent billed BW, the Respondent stated that nothing had strictly been put in place. BW told the Respondent what he was to be paid and he was content with that until the end of the work when BW was not covering the credit card charge backs without a lot of persuasion and the Respondent had to cover them from his own resources and then chase BW to make it good.

65.8 The Respondent explained the payment of £2,500 recorded on the K75/3 ledger on 19 March 2010 to a Mr B and the issue of whether there was an underlying legal transaction; the Respondent stated that this had to be seen in the context of the Respondent giving general advice regarding the Consumer Credit Act. This was all about individuals seeking to "wriggle out of" credit card payments; it was not the greatest work but the government was criticising credit card companies. The fact that the firm paid Mr B indicated that the context was an underlying legal activity; Mr B

was a barrister and the evidence for that was what the Respondent was now saying so. Mr B was one of the Respondent's referees.

65.9 In respect of the inter ledger transfers of £2,250 on 8 April 2011 from K75/3 to the A3DT ledger which was paid to IL on the same day, the Respondent gave evidence that this was made because BW wanted to put some money into A3DT and it was done on his instructions. As to the inter ledger transfer of £13,000 on 20 April 2011 paid to ST, whom the Respondent confirmed was the girlfriend of BW at the time, the Respondent had never met her; he did as the client told him. The Respondent could not tell from the documents whether BW instructed the inter ledger transfer. He must have had a good reason that made sense. BW was in control of both businesses and he gave the Respondent instructions and the Respondent authorised it. The Respondent would not do it now with the benefit of this hearing. As to any risk of money laundering that the Respondent might create, the Respondent stated that he genuinely did not see that; the fact he went through with the transaction meant that he did not think it was suspicious. He denied that he did not give it any thought at all, neither knowing nor caring if it was the right thing to do.

65.10 In respect of a payment to Key2Law (Nominees) of £2,000 on 15 April 2011, the Respondent explained he was a beneficiary. As to other payments that day: to Mr MH of £2,500, he was someone to whom BW or K2C owed money; to C Marketing of £6,414.10, it did work for K2C, to try to generate business regarding an on line search engine. This was a business debt of K2C. The Respondent was aware it was not appropriate to pay debts since the Solicitors Accounts Rules of 1998 and it was now apparent that he was facilitating banking but he did not have it in mind at the time. The Respondent stated that this was in the context that he was providing general advice. BW would call and tell him the credit card company was saying something and ask what he BW should do.

65.11 In respect of the payment of £5,000 to the Respondent's wife's company CB on 5 May 2011, the Respondent gave evidence that BW owed the Respondent money and his wife was buying a new piece of equipment for her business so the Respondent gave her his £5,000. He could not remember how BW came to pay him the money. He did not think to tell the IO about it because it was a properly authorised payment by a client to the Respondent that the Respondent paid to his wife' company. BW probably owed him a lot more than £5,000 and rather than pay from his private resources, the Respondent thought this was a good way to get BW to pay him. He could see there was sufficient money in client account. With the benefit of hindsight he would not have foreshortened the process. In term of documentary evidence about the debt from BW to the Respondent of £5,000, the Respondent said that his evidence had been put together at the last minute. There would be some, somewhere. He did not have anything from his wife about what it was used for.

<u>Determination of the Tribunal in respect of allegations 1.3 and 1.4</u>

65.12 The Tribunal considered the submissions for the Applicant and for the Respondent and the evidence including the oral evidence. The underlying facts were admitted. The K2C ledger K75/3 showed that sums totalling £566,952.44 had been received between 16 March 2010 and 14 August 2011 by way of various payments which were readily identifiable from the ledger. It was not disputed that the most significant

payments which appeared to have no underlying legal transaction took place between 14 April 2010 and 14 November 2011 and totalled £227,635.20. It was also not disputed that K2C had been set up using marketing that directed people to pay the firm which resulted in the firm processing debit and credit card payments from members of the public in respect of what the Respondent described as pre-litigation work. The system was set up in such a way that the money fell into the firm's client account. The Respondent did not make any checks and he made the ledger frequently available through the cashiers to BW someone who was not even a director of K2C and on BW's instructions authorised the distribution of significant amounts of money that belonged to numerous other people. There would have been an underlying legal transaction if the money had been paid to the firm, even if it had been for pre-litigation work provided that work was carried out by the firm, and provided the money was held in the names of individual clients, then process would have been acceptable but this did not happen. Anyone looking at the ledger would recognise that it was being used as a banking facility without underlying legal transactions relating to the receipts and payments out and this was another aspect of the Respondent's approach to the client account and any instructions that BW gave in respect of this part of it. Regarding the ledger K75/3, the Tribunal found that the Respondent effectively handed over control of the receipts and payments to a third party BW who was not a member of the firm where there was no underlying legal transactions and allowed the ledger to be used as a banking facility The Tribunal agreed with Mr Barton that the sheer quantity of payments and receipts showed that this was a banking facility.

65.13 The Applicant also relied on inter ledger transfers resulting in a payment to IL of £2,250 on 8 April 2011 and to ST of £13,000 on 20 April 2011. The Tribunal found that BW treated this ledger and A147/1 as indistinguishable as evidenced by the two occasions where he had ordered money to be moved between them to suit his own purposes which, particularly in respect of the payment to his girlfriend were unclear. The Tribunal noted that although there had been reference in cross-examination to the inter ledger transfers constituting loans between clients, no allegation related to it and the Tribunal did not consider the point. The inter ledger transfers made without any obvious purpose also went to substantiate allegation 1.3 and 1.4.

65.14 The Respondent made some admissions but denied that he had failed to act with integrity or that he failed to protect client assets and funds (Principle 10). The evidence of JM had shown that the Respondent was accepting instructions willy-nilly from BW; she received calls from BW and deflected them back asking him to put his instructions in writing and then seeking authority from the Respondent to carry them out. The Respondent seemed always to consent and there was no evidence that he had ever raised any queries about any of the receipts or payments. The Tribunal found the numerous payments received from members of the public to be clients' funds and the unquestioning acceptance of BW's instructions in respect of the monies to be conclusive evidence that the Respondent had failed to protect client assets and funds.

65.15 In determining the issue of integrity, the Tribunal had regard to the guidance in the case of Hoodless and Blackwell v FSA where it was stated:

> "that a person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to

an ethical code. For this purpose a person may lack integrity even though it is not established that he/she has been dishonest."

The Tribunal considered that it lacked integrity to take money from the public into an arrangement that should provide some sort of legal transaction and did not do so and to allow a significant amount of it to be paid away on the instructions of someone with no authority to give them. It was quite clear that the Respondent thought that he was providing a good service to BW who agreed he could pay himself and his wife's company from K75/3. The Tribunal also found that the transactions involving the inter ledger transfers involved a lack of integrity on the admitted facts. The Respondent showed no evidence of having enquired into the reasons for the transfers and payments out or to have cared at all about what he was instructed to authorise. The Tribunal found that there was no steady adherence to any kind of ethical code in evidence in the operation of K75/3 or the inter ledger transfers. The test for acting with lack of integrity was an objective one and it was satisfied to the required standard.

65.16 **The Tribunal found that by his conduct the Respondent had breached Rules 1.03 and 1.06 of the Code and note (ix) to Rule 15 of the SARs 1998 and indeed these breaches have been admitted. The Tribunal also found that the Respondent by his conduct had breached Rule 1.02 of the Code. The Tribunal found allegation 1.3 proved to the required standard in every aspect alleged.**

65.17 **For the same reasons as set out in respect of allegation 1.3, the Tribunal found that on and after 6 October 2011, by his admitted conduct the Respondent had failed to act with integrity in providing a banking facility and was thereby in breach of Principle 2 and Principle 10 because he had showed no regard at all his obligation to protect client money and assets. The Tribunal also found proved the admitted breaches of Principles 3 and 6 and Rule 14.5 of the SRA Accounts Rules 2011. The Tribunal found allegation 1.4 to the required standard.**

<u>Determination of the Tribunal regarding the allegations 1.3 and 1 .4 dishonesty</u>

65.18 The Tribunal considered that a reasonable and honest person would consider that what the Respondent had done in the particular circumstances in permitting money to pass into and out of client account when not accompanied by the conduct of a legitimate underlying legal transaction and providing banking facilities through client account to be dishonest and the objective test in Twinsectra was satisfied. The Tribunal then considered the subjective test. It found that the Respondent thought that he was acting as an agent and giving general advice but even if he did give some advice the financial transactions did not relate to the advice. The Tribunal found that the Respondent did not care what BW did with the money in client account because he believed it was BW's money. The Respondent left a snapshot of his thinking in his early pleadings until Ms Heley disabused him, but even then in giving evidence he still did not resile from his stance that he was justified in what he had done because he acted on BW's instructions. This mindset gave the Tribunal great cause for concern but it did not amount to knowing he was dishonest and so the subjective test in Twinsectra was not satisfied. **The Tribunal found dishonesty not proved to the required standard in respect of allegations 1.3 and 1.4.**

66. **Allegation 1.5 - In breach of Principle 8 of the SRA Principles 2011 he [the Respondent] failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles.**

66.1 For the Applicant, Mr Barton submitted that this final allegation was admitted. The Respondent's business failed because it owed too much tax to HMRC and could not pay its way. The debt of itself in the amount of £232,317 was compelling evidence of financial mismanagement by the Respondent in breach of Principle 8. The money owed in respect of tax was substantial. Sound financial management required proper provision to be made for tax and the fact it was not available led to an inference that the money had been spent elsewhere. Mr Barton submitted that it was reasonable to suggest that the Respondent knew of the firm's serious financial difficulties on 15 August 2012 when the investigation started and he was asked if he had anything that he wanted to tell the IO about and replied that he did not.

66.2 The Tribunal noted that the allegation was limited to the Respondent's conduct in the running of the firm as a business in respect of allowing a debt to build up to HMRC. The Tribunal found allegation 1.5 proved to the required standard indeed it was admitted.

Previous Disciplinary Matters

67. None

Mitigation

68. Ms Heley submitted that the Respondent recognised that he went wrong possibly not to the full extent because he had been hampered by not having papers which had been available to the Applicant 18 months ago. He made admissions when he gained a better understanding of the case against him. The Tribunal had read his original submissions which were in a rather more aggressive tone than one might expect because the Respondent felt he was being accused of stealing £250,000 of client money. When he obtained legal advice he accepted immediately that he had done wrong and filed a great deal more evidence. He had been working in a relatively successful practice but it deteriorated in 2010: he met BW and became involved in separate and coincidental litigation which he had no choice but to defend. It was a huge case and took his attention off running his practice. Proceedings were issued in October 2010 and judgment was handed down on 14 October 2011 with a further costs hearing on 14 November 2011. At the same time the Respondent had problems with HMRC about unpaid debts and was involved in family proceedings with a consent order in early 2011. The Tribunal had a medical report about serious issues relating to a close family member. The Respondent also had anxiety problems which was evident from the medical reports the Tribunal had looked at. It was a very difficult time for the Respondent. He had systems in place at the firm but he placed too much reliance on them without stepping back and taking a critical view and exercising independent judgment. In dealing with the Applicant the problem was that he did not fully comprehend the concerns that he needed to answer and this was simply because he was under so much pressure.

69. Ms Heley submitted that it was not a question that no records were kept at the firm; JM kept quite detailed records about the requests for payments out. The ledger correctly showed what happened and the money could be traced. The Tribunal had properly found that the Respondent was not dishonest. Ms Heley submitted that he was misled. It was accepted that the Respondent must answer for the improper receipt of credit card holders' money through the firm's client account. The Respondent had already suffered a great deal; he was bankrupt, he faced a costs order. The firm had failed by reason of the insolvency liquidation before the intervention, but any hope of giving creditors any of their money back was lost by the intervention. Possibly but for the intervention the Respondent would have got some money back. His practising certificate was suspended automatically by the intervention and he did not know that he could have gone to the Applicant and asked for his practising certificate back. He thought that the procedure was to apply to the Tribunal and so his practising certificate had already been suspended for 18 months.

70. Ms Heley fully expected that the Tribunal would be looking at an indefinite suspension. She submitted that striking off would be too severe given what was going on in the Respondent's life. He accepted that he was not a good manager but he was a good lawyer; his referees said that about him but he was too nice to his clients or to persons he believed to be his clients. It was not a solicitor's job to regulate the business of clients and on the evidence before the Tribunal everything that happened was on client's instructions. There was no evidence the money was other than in accordance with instructions. Ms Heley submitted that in regulatory terms matters had moved on since the 1990s and the case of Weston v The Law Society [1998] Times, 15 July referred to in the Tribunal's Guidance Notes on Sanctions. The practice of imposing conditions on solicitors was more prevalent now and was practically unheard of then. The Respondent would be content to be subject to a condition that he should not manage client money because he accepted that he fell down there. The Applicant could consider if there should be additional conditions on his practising certificate. Where there was a risk regarding a Respondent's management of client funds, it could be addressed by the imposition of conditions rather than anything more serious and misconduct could be addressed by a fixed period of suspension. (For the Applicant, Mr Barton made submissions about the magnitude of the personal benefit which the Respondent had derived from the improper payments and as to the correctness of the Applicant's decision to intervene in the insolvent firm.) Also sanction had to be proportionate and targeted and the Human Rights Act applied. The Tribunal had enquired about the Respondent's alcohol consumption and Ms Heley gave the Tribunal current information that he continued to drink 50 units of alcohol per week, was not currently receiving any medical attention or treatment, and was not attending any counselling sessions or Alcoholics Anonymous.

Sanction

71. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation put forward for the Respondent and the testimonials submitted. This was a case of very serious misconduct; the allegations found proved included lack of integrity in respect of the management of client account (allegations 1.3 and 1.4). The Tribunal had regard to the case of Bolton v The Law Society [1994] 1 WLR 512 which set out the fundamental principle and purposes of the imposition of sanctions by the Tribunal, including:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal."

And

> "… to be sure that the offender does not have the opportunity to repeat the offence;"

The Respondent testified that he had taken on the work in question because he wanted to expand the business of the firm and he wanted to create a working relationship with another entity using similar names so that members of the public would move seamlessly from one to the other. The Tribunal had regard to the fact that no dishonesty had been proved, the Respondent had not concealed his actions and had not previously been before the Tribunal but the conduct in question had been repeated for over 19 months with payments totalling in excess of £500,000 being received into client account in one of the matters complained of and while not vulnerable in the strictest sense of the word, the members of the public making those payments were by definition already in debt as the Respondent was well aware. The most worrying aspect of the case was that the Respondent, who was a solicitor of many years experience, had effectively lost control of his client account to another person who was not a solicitor and not even a client of the firm to do with as he wished. The Tribunal was in no doubt that the most serious harm to the reputation of the profession would result if the public knew that numerous people were being directed to make payments into a solicitor's client account where they had an expectation that the money would be safe and it was then paid away without question. Just as adverse would be the impact upon the profession's reputation arising out of the case of K, who made a direct investment through the firm upon particular terms which were never fulfilled and yet his funds were completely dissipated. The damage was compounded by the fact that even after K's solicitors had complained and threatened to report the matter to the Applicant, the Respondent unquestioningly accepted assurances that the matter was being dealt with. The Respondent's trustworthiness was seriously in question. The Tribunal took into account that the Respondent had made partial admissions but equally it noted that he had taken no real responsibility for what had occurred even while giving evidence before the Tribunal. Although he had changed his approach to some aspects of the matter after receiving legal advice, he repeatedly said in giving evidence that while he now regretted doing it he considered that following instructions was an acceptable excuse regardless of their nature. He had also been assertive in giving evidence in his defence of the payments he received from client account either personally or for the benefit of entities he controlled, as a way of collecting debts he regarded as owing to him from others although he accepted in principal that he should not have done it. The Tribunal had in mind that in deciding what sanction, if any, to impose the Tribunal should have regard to the principle of proportionality, weighing the interests of the public with those of the practitioner. The Respondent had advanced considerable mitigation. The Tribunal had noted that the misconduct all involved work done in which a particular individual featured heavily and that the Respondent's other work was not complained of and this suggested that the Respondent was in thrall to that person. However it was the duty of a solicitor to be able to stand up for his obligations and carry them out notwithstanding such

pressures. As to personal mitigation, the Tribunal did not have any up-to-date medical report but it noted the medical advice the Respondent received in December 2012 about alcohol and that he was not acting on this advice according to the information provided via Ms Heley notwithstanding that he relied on his problems with alcohol in his mitigation. Having regard to that and his very limited insight into his misconduct, the Tribunal did not consider that a fixed term of suspension would suffice to protect the public and the reputation of the profession. The Tribunal went on to consider an indefinite suspension. The Respondent had a good reputation as a solicitor and a wide range of testimonials but the Tribunal did not consider that there was truly compelling and exceptional personal mitigation such as would make striking off unjust; the Tribunal certainly considered this to be a matter that fell into the category of cases referred to in its Guidance Notes on Sanctions: "Strike off can be appropriate in the absence of dishonesty. Where a respondent's failure properly to monitor clients' money leads to its misappropriation or misuse by others, such a serious breach of the obligation could warrant striking off." There had been misuse of client money on a considerable scale in this matter. The Tribunal also had particular regard to the case of Weston v The Law Society where Lord Bingham said:

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

The Tribunal did not consider that his mitigation surmounted the high hurdle set out in Bolton when set against the seriousness of the Respondent's misconduct and his lack of insight. Neither did the Tribunal feel that there was a realistic prospect that the Respondent would recover or respond to retraining so that he no longer represented a material risk of harm to the public or to the reputation of the profession for the reasons already stated. There was no indication of the type referred to in the case of Bolton of a solicitor who had come to the Tribunal and said that he had learned his lesson. He clearly had not done so. Accordingly the Tribunal determined that he must be struck off the Roll.

Costs

72. For the Applicant, Mr Barton applied for costs against the Respondent. In addition to the amount of £44,059.88 on the main costs schedule Mr Barton submitted an addendum in the amount of £3,680 for obtaining evidence from the two schools to which payment had been made from client account, including issuing witness summonses. The Respondent failed to respond to the invitation to agree facts and that led to expenditure of around £1,500. The witnesses had been stood down when Ms Heley agreed to the information provided. There had also been some uncertainty about how the hearing would proceed and Mr Barton also had not known that he would receive the documents admitted at the beginning of the hearing. Had both parties followed the Tribunal's standard directions, the Applicant would not have incurred all these costs. He also submitted that the hearing had been estimated at three days with one day in reserve and his original schedule was based on three days. Mr Barton suggested that a deduction in respect of overnight expenses as three nights

were allowed for but only two had been required. The total amount now applied for was £47,519.80. The only information which the Tribunal heard about the Respondent's financial position was that he was bankrupt; no schedule of assets had been provided. Based on submissions made to the Tribunal in the recent case number 10997-2012 Yildiz, it would appear that the costs would fall into the Respondent's bankruptcy as he was made bankrupt after the proceedings were issued (23 October 2013). Mr Barton therefore asked for an unqualified costs order and for the Tribunal summarily to assess costs.

73. For the Respondent, Ms Heley submitted that she would not make formal representations about the costs claimed; there were no errors that she could flag up. The Respondent had not submitted a statement of his assets because they all vested in the trustee in bankruptcy. He was an undischarged bankrupt and also subject to a maintenance order made in family proceedings by consent. The Respondent was unemployed. Ms Heley did not think that his wife's business was a family asset. Ms Heley was in some difficulty providing information because the Respondent had only been made bankrupt on 1 April 2014 and so there was no information from the trustee who was due to be appointed on 19 June 2014. It was not the Respondent's place to agree costs. Ms Heley also referred to the recent Tribunal case of Yildiz and made reference to Rule 12 of the Insolvency Rules. She was therefore agreeable to the Tribunal making an order and leaving the issue to the trustee to resolve. As to quantum, Ms Heley queried the amount of time claimed for attendance at the hearing and the amount incurred in respect of the witness summonses. Mr Barton confirmed that the work on the latter had been undertaken by a trainee under his instruction. Ms Heley asked the Tribunal to bear in mind that the people most likely to be affected by a costs order were the Respondent's creditors. The Tribunal assessed the costs at £42,500, making something of a reduction for the amount of time claimed for attendance at the hearing, and based on the submissions for both parties made an immediate order against the Respondent.

Statement of Full Order

74. The Tribunal Ordered that the Respondent, Robert Stuart Franklin Scott, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £42,500.

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

J.C. Chesterton
Solicitor Member

On behalf of J. Devonish
Chairman