SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11204-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RUKHSANA JABEEN KIANI Respondent

Before:

Mr J. C. Chesterton (in the chair)
Miss J. P. Devonish
Mrs L. Barnett

Date of Hearing: 19 April 2016

Appearances

Mr Andrew Bullock, counsel, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Gregory Treverton-Jones QC, counsel, of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD, instructed by Mr Robert Forman, solicitor, of Murdochs Solicitors, 45 High Street, Wanstead, London E11 2AA, for the Respondent, who was present.

JUDGMENT

Background and nature of this Judgment

1. The Application and Rule 5 Statement in this matter were made on 25 November 2013. A total of eight allegations were made against the Respondent.

2. At a hearing at the Tribunal on 8 and 9 September 2014, the Tribunal found seven of the eight allegations proved and made an order for sanction and costs. The Tribunal's Judgment was dated 15 October 2014.

3. On 5 November 2014 the Respondent filed a Notice of Appeal with the Administrative Court. The Appeal was heard by Mrs Justice Laing ("Laing J") on 9 and 12 June 2015. The Order made on 12 June 2015 was not available to this division of the Tribunal as the parties had been unable to agree the extent to which (if at all) that Order should be redacted.

4. As a result of the Order of Laing J, none of the findings in relation to the allegations were overturned but the case was remitted to the Tribunal for sanction to be considered afresh. It was submitted by the Applicant that the basis of the successful appeal was that certain obiter comments of the Tribunal within its Judgment suggested that it had made findings in relation to matters which were not the subject of the allegations within the Rule 5 Statement and that the sanction imposed may therefore have been inappropriate.

5. The parties agreed a redacted version of the Tribunal's Judgment of 15 October 2014, and this was before this division of the Tribunal. The redacted Judgment is appended hereto as Appendix A, to avoid repetition in detail of the facts and matters covered in that Judgment.

6. The Tribunal noted that its role at this hearing was to consider sanction and costs only, not to rehear the case.

Documents

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

Applicant:-

- Trial bundle, comprising –
- File 1
  - Redacted Judgment of the Tribunal dated 15 October 2014
  - Memorandum of Tribunal Directions hearing of 29 September 2015
  - Second statement of the Respondent (re mitigation) dated 18 March 2016, with exhibit
  - Medical report dated 16 July 2014 (which was before the Tribunal in September 2014)
  - Respondent's papers concerning a car-jacking incident in December 2008 (provided by the Respondent to the September 2014 hearing)
  - Respondent's testimonials as available to the Tribunal in September 2014
  - Judgment in Tribunal case 10453/2010 (heard on 21 October 2010)

- File 2
  - Application and Rule 5 Statement (with exhibit) dated 25 November 2013
  - Further particulars dated 14 February 2014
  - Applicant's supplementary bundle

- File 3
  - Respondent's witness statement dated 21 July 2014
  - Witness statement of Mr MA dated 13 June 2014 and related papers
  - Witness statement of Mr NA dated 11 July 2014
  - Witness statement of Mr N Ahmed dated 12 July 2014
  - Witness statement of Mr SK dated 16 July 2014
  - Further documents from the Respondent's trial bundle of the hearing in September 2014
- Applicant's statement of costs dated 14 April 2016
- Applicant's procedural chronology and case summary dated

Respondent: -

- Further bundle of testimonials for the Respondent

8. The Tribunal noted that the case of Weston v Law Society [1998] The Times, 15th July ("Weston") had not been referred to at the hearing in September 2014, and that this may be relevant. Copies of the decision in Weston were provided by the Tribunal to the parties.

Preliminary Matter - Previous Sanction

9. The Tribunal noted that the parties had taken great care to redact from the papers any reference to the sanction imposed at the hearing in September 2014. However, a number of the testimonials provided to this hearing by the Respondent referred to that sanction. The Tribunal noted that position and confirmed to the parties that it would ignore the previous sanction in considering the sanction it would impose.

Factual Background

10. The factual background to the case was set out in the Judgment at Appendix A, paragraphs 11 to 88.

11. The allegations which had been found proved against the Respondent were:

    1.1 In breach of Rule 7 of the Solicitors Accounts Rules 1998 ("SAR 1998"), she failed to remedy breaches thereof promptly upon discovery;

    1.2 In breach of Rule 22(1)(e) of SAR 1998 client money was withdrawn from client account when instructions to do so were neither given nor confirmed in writing;

    1.3 In breach of Rule 22(5) of SAR 1998 she withdrew money in relation to a particular client which exceeded the money held on behalf of that client thereby creating a shortage on client account;

1.4 In breach of Rule 32 of SAR 1998:

1.4.1 she failed to keep accounting records properly written up at all times to show her dealings with client money received held or paid;

1.4.2 she failed to record all dealings with client money in a client ledger;

1.4.3 the current balance on each client ledger was not always shown or readily available;

1.5 She failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.6 She failed to have sufficient regard for her duties under the Money Laundering Regulations 2009 and/or the Law Society's Blue Warning on money laundering and thereby breached Rule 1.06 of the 2007 Code;

1.7 She 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 2007 Code and/or note (ix) to Rule 15 of the SAR 1998.

Submissions of the Applicant

12. The Applicant submitted that the first four of the proven allegations related to breaches of the SAR 1998. The facts underlying these allegations, in summary were that:

12.1 There was a minimum client account shortage of £42,538.64 as at 16 September 2010 as payments were made without funds for the relevant client being held on account. The Respondent's evidence at the hearing in September 2014 was that the shortfall was cleared on 5 April 2011;

12.2 A client ledger showed a positive balance when, at the relevant time, it was overdrawn;

12.3 Transactions were not recorded accurately on ledgers on a number of occasions;

12.4 The Respondent had authorised a number of £60,000 inter-ledger transfers between clients without written authority or without written confirmation being provided to the clients. In addition, there was a further isolated £4,000 transfer between two ledgers for which there was no written authority from either party. The Respondent had told the investigation officer that if she had a client who was urgently in need of completion funds, she would contact another client and ask for the provision of a short term loan. The Respondent had stated that she did not draw up any loan agreements for these loans.

13. In relation to allegation 1.5, a lack of integrity had been proved in relation to two separate transactions. The facts underlying the first transaction are summarised at paragraphs 47 to 61 of the Judgment at Appendix A, and the Tribunal's findings at

paragraphs 186.2 to 186.6. In summary, the Respondent paid away the funds received from the sale of a property without first arranging for the discharge of the mortgage on that property. The purchaser's solicitors had repeatedly chased for confirmation that the mortgage had been discharged, in order to register the purchase. The Tribunal had found that the Respondent was aware of her obligation to redeem the loan but had not done so. The letters from the Respondent's firm, asserted that the firm was pressing for the DS1 from the bank but the Respondent had admitted that she had not had any contact with the bank. The Tribunal also found that the Respondent had continued to give the purchaser's solicitors the impression that the firm was awaiting the DS1 at a time when she had paid away the purchase money and was not in a position to redeem the loan. The Tribunal had concluded that in this transaction there had been a lack of integrity.

14. The facts underlying the second transaction dealt with at allegation 1.5 are summarised at paragraphs 62 to 66 of the Judgment at Appendix A and the Tribunal's findings are set out at paragraphs 186.7 to 186.10. In summary, the Respondent was supervising a conveyancing transaction and was required to pay the full sale proceeds to a bank to redeem the mortgage. On the day of completion, £60,000 was transferred to another client's ledger but the buyer's solicitors were informed that the mortgage had been redeemed. The full sale proceeds were not sent to the bank until about 18 days after completion, such payment being made possible by a £60,000 transfer from another client's ledger (in breach of the SAR 1998, and as considered in relation to earlier allegations). The Tribunal found that the Respondent's firm had given an undertaking to the bank that the charge would be redeemed. However, monies had been paid away to Mr and Mrs A so that the charge could not be redeemed on completion. The Tribunal also found that an undertaking of this nature should be complied with promptly; paying away the funds in these circumstances lacked integrity.

15. Allegation 1.6 had been proved in relation to two transactions out of the three referred to by the Applicant. The allegation related to breaches of the Money Laundering Regulations 2007. The factual background to the allegations is set out at paragraphs 67 to 77 of the Judgment at Appendix A, and the Tribunal's findings at paragraph 187.

16. In the first of the two transactions, the Respondent received the sum of £18,000 in cash from Mr A into her client account. Although the Tribunal accepted that Mr A had faxed the Respondent the receipt before completion, the Respondent had made no record on the file of any money laundering checks or questions being put to Mr A about the cash payment. In the second matter, the Respondent received £70,000 and £65,000 from third parties on a matter file for Ms B. £70,000 of these funds was distributed with no records on the file to explain the receipts of payments. The Tribunal had noted that the Respondent's evidence was that one of the payers, Ms FS, was the business partner of Ms B and owed her monies. However, there was no information on file, or witness evidence before the Tribunal, to confirm this assertion and there was nothing to show that due diligence had been carried out by the Respondent. The Tribunal found that it was a solicitor's duty to carry out due diligence on the receipt of such a large sum, and the Respondent had not done so.

17. The Applicant submitted that allegation 1.7 related to the receipt of money and payment out without there being an underlying legal transaction. The factual background to this allegation is set out at paragraphs 78 to 83 of the Judgment at Appendix A, with the Tribunal's findings at paragraph 188. The Respondent had received £70,000 from AZ Solicitors in relation to Ms B on 5 March 2009. The Tribunal rejected the Respondent's assertion that the monies from AZ Solicitors were similar to monies being sent from a branch office of the firm; they were two separate firms. Further, on the Respondent's own description, there could be no clearer example of a solicitor using a client account as a banking facility, unrelated to any legal transaction.

18. The Applicant submitted that the Tribunal needed to consider sanction on the basis of the findings which had been made by the earlier division of the Tribunal. There had been no allegation of dishonesty but, it was submitted, these were matters of some seriousness. As indicated by the case of Weston, breaches of the Accounts Rules were inherently serious. There had been one previous appearance by the Respondent at the Tribunal and that would need to be considered.

Mitigation

19. Mr Treverton-Jones made submissions in mitigation for the Respondent.

20. The Respondent acknowledged that the matters found were of some gravity, and that the Tribunal was duty bound to take into account the previous matter (case 10453/2010).

21. Mr Treverton-Jones submitted that this was an unusual case. The investigation into the Respondent had started on 7 December 2010, and all the factual matters in the case pre-dated the start of the investigation. The Respondent had twice been interviewed by the forensic investigation officer, on 16 February and 5 April 2011. The forensic investigation report in the case was dated 29 November 2011. The proceedings before the Tribunal began almost two years later, on 25 November 2013; there had been no explanation for that delay which was apparent from the papers. The substantive hearing had taken place in September 2014 and the written Judgment was dated 15 October 2014. The appeal heard in June 2015 had led to matters being remitted to the Tribunal for determination of sanction, in relation to events in 2009/10 i.e. some 6 or 7 years ago. The Respondent was not responsible for any of the delay in the case. The Tribunal was invited to take into account the fact that the Respondent had had these matters hanging over her from the start of the investigation in December 2010.

22. Mr Treverton-Jones told the Tribunal that the Respondent was nearly 57 years old. She was admitted as a solicitor in 1985 and had worked as an assistant at Druces and Atlee, a well-established firm. Later, the Respondent had worked as an in-house solicitor, then had lived abroad for several years before returning to work in England and establishing the Firm.

23. Mr Treverton-Jones told the Tribunal that in 2007 the Respondent and her husband had separated. They had one adopted child who was now taking A levels. In 2008, when the child was about 10, the Respondent had been the victim of a car-jacking

incident in which she had been injured when a man jumped into her car, pushed her out with force which caused injury, and drove off in the car. The perpetrator was quickly apprehended, but the incident had had a considerable effect on the Respondent, particularly as her child had witnessed the aftermath of the incident.

24. Mr Treverton-Jones referred the Tribunal to the psychiatric report of Dr Bradley dated 16 July 2014. This concluded that the Respondent had suffered with symptoms of post-traumatic stress disorder, which were of mild to moderate severity by the time of the report, precipitated by the events of 8 December 2008. It was also reported that the Respondent suffered with moderately severe symptoms of depression. In addition to the car-jacking, the report set out personal and family matters which had caused the Respondent difficulty. It was stated by Dr Bradley, "On the basis of her symptoms as described to me, her lack of concentration was at its worst in the period 18-24 months after the car-jacking in 2008" (i.e. in the period from mid-2010 to December 2010).

25. Mr Treverton-Jones told the Tribunal of the Respondent's problems from the autumn of 2008 in her health, family and work. There had been problems in all three of these important aspects of the Respondent's life.

26. Mr Treverton-Jones told the Tribunal that the Respondent had practiced in partnership, but this had ended in April 2009; all of the relevant events took place whilst she was a sole practitioner. As a result of the financial crash from the autumn of 2008, the Respondent's firm, which dealt mainly with conveyancing work, had reduced the number of staff during 2009. The Firm had had a good bookkeeper, who left in March 2009; after that, the Respondent was dependent on part-time bookkeepers.

27. Mr Treverton-Jones submitted that the Respondent was now an undischarged bankrupt, which may suggest that a fine would not be appropriate. In any event, it may be that the findings were too serious to merit a fine. However, Mr Treverton-Jones submitted, this matter did not merit the ultimate sanction.

28. With regard to the allegations, all of the relevant events had occurred a number of years ago. The Respondent had served the Asian community in her practice. It had been usual in the course of her practice for many matters to be dealt with on the basis of oral assurances and contracts, which were taken as binding. With regard to the SAR breaches, in particular the transfers of £60,000, there had been oral requests with regard to the transfers. The Respondent recognised that those instructions should have been recorded in writing, but the system which should have been followed had broken down. The Respondent was the sole principal of the Firm at the relevant time and so was responsible for the breaches which arose as her assistant solicitor did not follow her instructions.

29. The client account shortage, dealt with at allegation 1.1, arose in part as a cheque paid into client account was not met on presentation. The Respondent accepted that this had not been rectified for some months following the creation of the shortage. This was during a period when the Respondent's financial position was such that she could not easily borrow funds to replace the shortage.

30. Allegations 1.3 and 1.4 involved bookkeeping errors, for which the Respondent had to take responsibility. In her second witness statement, the Respondent had made clear that she accepted that the transactions mentioned in allegation 1.5 had involved a lack of integrity on her part. Allegation 1.6 had involved receipt of two sums without due diligence and in allegation 1.7 there had been receipt of funds with no underlying legal transaction.

31. Mr Treverton-Jones submitted that matters such as the proven allegations in this case did not deserve punishment but the Tribunal may wish to ensure that they could not occur again. Mr Treverton-Jones submitted that in her second witness statement the Respondent had been unusually candid. Mr Treverton-Jones referred to passages in the statement which read:

> "I have also reflected on my practice to allow and engage with inter-client loans. Such loans are commonplace in the Muslim community. I now understand that they are not a proper part of a law practice and I should not have engaged with them; I sincerely apologise, as I do for all my errors. I also accept that the number of third-party funders and cash payments should have been scrutinised to a much greater extent and I understand the accounting and money laundering reasons for doing so. I am fortunate that no loss was occasioned by these failures.
>
> Having acted without integrity in my dealings with [N Law], and having failed to comply with the various other rules as set out in the Tribunal's findings, I have brought shame upon myself and on the profession.
>
> Additionally, and with great consequence to me, I have dented my good standing in the community, I have been humiliated and stigmatised in the eyes of my peers and lost credibility.
>
> I will not make the same mistakes. I have no ambition to be a sole-practitioner again, or even to be in partnership, but I do feel that I (am) able to provide a useful and compliant service to clients as a supervised assistant solicitor."

32. Mr Treverton-Jones submitted that the Respondent was being realistic in stating that she did not intend to be a partner in a firm or a sole practitioner.

33. The Respondent had not been able to work in the profession since September 2014, as she had been struck off with immediate effect. As the High Court judge had indicated that the Respondent should not practice until the case had been considered by this Tribunal, the Respondent had volunteered an undertaking not to apply for a Practising Certificate until the case had been completed. The Respondent had been unemployable in the profession. However, the Respondent had kept busy and in particular had undertaken training courses. The Respondent appreciated that at the relevant time she had an inadequate understanding of the professional rules, including accounts rules; she had now undertaken training on law firm management.

34. Mr Treverton-Jones referred the Tribunal to the 22 references presented to the hearing in September 2014 and the further 17 testimonials presented to this hearing. The first batch of testimonials were from friends, clients and a barrister. The further bundle

contained three letters from solicitors who indicated they would be able to work with the Respondent. The references formed an impressive body of testimony, from which the Tribunal could see that the Respondent had a great deal to offer the profession and the public. The Respondent was highly intelligent and articulate.

35. Mr Treverton-Jones submitted that if the Respondent were to be suspended, the Tribunal may take into account that she had been suspended, de facto, for about 18 months, since the original hearing. Mr Treverton-Jones submitted that there was no inhibition on the authorities for "back-dating" any period of suspension from September 2014. The Tribunal may also consider imposing restrictions on the Respondent's future practice, such that she could not work as a sole practitioner or partner and, for a period, could not handle client money.

36. Mr Treverton-Jones submitted that the Tribunal's function in imposing sanction included protection of the reputation of the profession and protection of the public. As the case of Weston showed, it could be appropriate to strike off a solicitor for a breach of the Accounts Rules which was not dishonest. The Tribunal would need to balance its obligations to the public and the profession with being fair and merciful, where appropriate. This was not a case where a strike off should be automatic and the Tribunal could take into account the time which had passed since the breaches and the Respondent's personal circumstances. It was submitted that if the Respondent were to be suspended, any suspension could be back-dated to the date of the first hearing.

37. Mr Treverton-Jones submitted that the Respondent had been adjudged bankrupt in February 2016; his fees were being paid by family friends of the Respondent. There had been no criticism of the Respondent's work or the conduct of her firm in the period from June 2010 (when the last of the relevant events occurred) until the Tribunal hearing in September 2014. Mr Treverton-Jones told the Tribunal that the Respondent's health had recovered from about 2010 and the firm's work in conveyancing had also recovered.

38. Mr Treverton-Jones referred the Tribunal to decisions of the Tribunal made in two other cases where there had been breaches of the Accounts Rules but there had been no order for strike off. These cases were Connick (matter number 11226/2014, heard on 10 and 11 November 2014) and Baker (matter number 11268/2014, heard on 8 January 2015).

Sanction

39. The Tribunal had regard to its Guidance Note on Sanctions (December 2015), to all of the facts of the case and the submissions of the parties.

40. The Tribunal noted that the previous Tribunal decisions referred to, Baker and Connick, were not binding but they provided some guidance on how cases which contained elements similar to this case had been dealt with by the Tribunal. In both of those cases, the Tribunal had considered all of the circumstances and applied the factors referred to in the Tribunal's Guidance Note. The Tribunal noted that the seriousness of the matters in the Baker case was greater than in the present case, but the Respondent in that case had had no previous appearances at the Tribunal.

41. The Tribunal noted that almost all of the complaints concerning the Respondent's conduct, including those dealt with in the previous case (10453/2010) arose in the period 2009/10. There were no complaints or concerns about the Respondent's conduct either prior to 2007/8 or after 2010. The Respondent should be given credit for the fact that in her professional work in the (almost) four years from the investigation until the September 2014 hearing there had been no further concerns raised. The Respondent's breaches had occurred at a time when she was undergoing health, family and work details. The report of Dr Bradley confirmed the health problems, in particular from December 2008, and stated that these had affected her work, in particular her concentration.

42. In assessing the seriousness of the Respondent's breaches, the Tribunal considered the Respondent's culpability for those breaches. There was no suggestion of any improper motivation; rather, the Respondent had believed she was assisting her clients and community. Her misconduct was not planned. The Respondent's stewardship of client funds fell below the standard expected of solicitors, but her actions had not caused any permanent loss (although there had been a risk of loss). The Respondent had not intended any harm by the way in which she had dealt with the various transactions. The Respondent's clients had been very supportive in their references – and in the witness statements of those who gave evidence at the September 2014 hearing – and there was some evidence that the transfers had been authorised, albeit too informally. The Respondent had control of the circumstances in which the breaches had occurred, but as noted in the medical report, her ability to control matters fully had been impaired. The medical report had noted the various family and health difficulties the Respondent had undergone in the period from late 2008 and in particular her lack of concentration arising from those various stresses. The Respondent was an experienced solicitor at the time of the misconduct. As noted in the medical report, the Respondent had felt that she had to be strong and cope with difficulties by herself, but had later recognised the need to obtain some support.

43. With regard to the harm caused, the Tribunal noted that those members of the public who had been aware of the Respondent and her firm had remained loyal to her, as shown by the many impressive testimonials which contained statements about her integrity. The Respondent was well thought of by those who had provided testimonials. However, the wider public would find it unacceptable that money had been used to make loans from one client to another without proper documentation. As recorded at paragraph 31 above, the Respondent had stated in her witness statement that loans of the kind she facilitated were commonplace within the Muslim community. However, this was could not be justification for breaches of the Accounts Rules, which were intended to provide the maximum protection for clients' funds. As stated in Weston by Lord Bingham LCJ,

> "…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."

44. The Respondent's breaches of the Accounts Rules, and the failure to comply fully with the money laundering requirements, would cause harm to the reputation of the profession. With regard to the money laundering breaches, the circumstances were that the Respondent had trusted her clients and those with whom she dealt to a degree which meant she did not carry out the appropriate checks, whilst her judgement was impaired and her normal professional standards had slipped. There had been a real risk of harm being caused, but no evidence of actual harm. The Tribunal had, of course, found that the Respondent had lacked integrity with regard to two allegations, and a total of three transactions. The Respondent's conduct had been potentially misleading to third parties. A solicitor who lacked integrity could expect a severe sanction.

45. The Tribunal noted that an aggravating factor in this matter was that the misconduct had been repeated, albeit it was not deliberate or calculated. The Respondent's professional judgement had been clouded both by the stresses to which she was subject and the apparent normality of some of the transactions within the community she served. The Respondent should have appreciated that her actions were in material breach of her professional obligations, in particular with regard to proper stewardship of client money. The Tribunal noted that the Respondent had now undertaken training and had shown insight into her misconduct.

46. As Mr Treverton-Jones had acknowledged in his submissions, the Tribunal was obliged to take into account the previous findings against the Respondent. In the earlier case, the Respondent had allowed her name to be used in a firm in which she had little, if any, real control. The allegations were not of the same nature as the allegations in the present case. The Tribunal noted that in the earlier case the Respondent had incurred a significant fine. The existence of the previous findings was an aggravating factor. However, the Tribunal noted and found that the earlier matter had also arisen in the 2008-2010 period, in respect of which the Tribunal had heard relevant mitigation.

47. The Tribunal noted that there were mitigating factors in this case. Whilst it had taken some time to replace the cash shortage, it had been replaced and there had been no permanent loss. The shortfall had arisen when cheques paid into client account had bounced, in circumstances where the Respondent had taken her client at face value. Whilst it could not be said that the misconduct occurred in a single incident, the misconduct was limited to a particular period of time in 2009/10. The Tribunal noted that this misconduct was substantially in the same period dealt with in the earlier Tribunal proceedings.

48. The Tribunal found that the Respondent had shown genuine insight. In her second witness statement, the Respondent had set out her acceptance of her misconduct and the training she had undertaken to ensure that she would practise in a compliant way in the future.

49. Overall, the Tribunal assessed the Respondent's misconduct as serious. In considering the appropriate sanction, the Tribunal took into account the Respondent's medical evidence and the considerable body of impressive personal testimonies provided on her behalf.

50. The misconduct in respect of which the Tribunal had to consider sanction was clearly far too serious for there to be no order, a reprimand or a fine. There had been serious breaches of the Accounts Rules, and the reputation of the profession had been harmed by the Respondent's misconduct, including the lack of integrity which had been proved. The Tribunal therefore had to consider whether striking off the Respondent or suspension would be appropriate. In the light of the Respondent's insight and acceptance of her serious misconduct, the Tribunal was satisfied that neither the protection of the reputation of the profession nor the protection of the public required a striking off order. To deprive the Respondent of the ability to practise at all, permanently, would be disproportionate on the particular facts of this case.

51. The Tribunal was satisfied that the appropriate sanction was, therefore, one of suspension from practise. The Tribunal considered carefully the appropriate period of suspension. This was a serious case but not at the highest end of the spectrum. The Tribunal considered that the matters proved in this case were less serious than those set out in the Baker case, in which suspension of one year had been deemed appropriate, but this Respondent had a previous Tribunal finding against her whereas Mr Baker did not. Reference to the Baker case was helpful, although of course no Tribunal decision was binding on any other division. The Tribunal's overall assessment of the seriousness of the case, and the Respondent's mitigation, meant that suspension for a period of one year was appropriate.

52. The Tribunal then considered whether or not the period of suspension should be "back-dated". Mr Treverton-Jones had submitted that there was nothing in the authorities to suggest back-dating was not possible. The Tribunal noted that as a result of the Tribunal's original order to strike her off in September 2014 and the Respondent's undertaking not to apply for a Practising Certificate, the Respondent had in effect served a period in which she was unable to work in the profession; this was analogous to a period of suspension. The Tribunal was satisfied that on the particular facts of this case, it was appropriate to back-date the period of suspension such that it was deemed to begin on 9 September 2014, and ended on 8 September 2015.

53. The Tribunal further considered whether it was appropriate to impose conditions on the Respondent's work as a solicitor. The Respondent's misconduct in this case had occurred whilst she was a sole practitioner, and the misconduct in the earlier proceedings occurred whilst she was a partner in a firm. The Tribunal was satisfied that in order to give the public confidence, and to protect the Respondent from being put under pressure by clients or others, it would be appropriate to impose restrictions such that she could not be a sole practitioner or a partner in a firm or any recognised body. Further, to ensure that the Respondent had appropriate supervision, she would only be permitted to work as a solicitor in employment approved by the Applicant. Those conditions would be for an indefinite period, although either party could apply to the Tribunal for permission to vary the restrictions. In addition, the Tribunal determined that it was appropriate to prevent the Respondent from handling client money for a two year period commencing on 19 April 2016, whilst she sought to re-establish herself in the profession.

Costs

54. On behalf of the Applicant, Mr Bullock applied for an order that the Respondent should pay the Applicant's costs of the remitted hearing and presented a costs schedule in the total sum of £4,074. Mr Bullock submitted that this hearing was, in effect, a continuation of the hearing which had taken place in September 2014 at which the Tribunal had made determinations on a number of contested allegations, all but one of which had been proved. Mr Bullock submitted that the Tribunal's starting point should be that the Applicant should be awarded its costs of this hearing (and preparation for it) as part of the overall process. At the appeal hearing in June 2015 there had been discussion about whether or not Laing J should deal with sanction or remit that matter to the Tribunal. The Respondent had taken the view that the matter should be remitted, and it was. The Applicant was a necessary party to the process.

55. With regard to the Respondent's bankruptcy, Mr Bullock accepted that the Applicant may not actually recover much, if anything, of any costs award. It may be that the award would fall into the bankruptcy, in which case the Applicant could prove as a creditor in the bankruptcy. If it were not a bankruptcy debt, the Tribunal may consider making an order that any costs should not be enforced without the further permission of the Tribunal.

56. Mr Treverton-Jones for the Respondent submitted that it would not be appropriate for the Tribunal to order the Respondent to pay the costs of this part of the proceedings. At the September 2014 hearing the Respondent had been ordered to pay costs in the region of £42,000; almost all of that had been paid, as it was offset by the Order for costs made against the Applicant on the appeal. It was submitted that the Respondent should not have to pay the costs of this second hearing, which had arisen as a result of an error made by the Tribunal in the first instance by going too far in its findings and thus making an error of law. Therefore, it was submitted, in principle, the Tribunal should make no order for costs.

57. Mr Treverton-Jones submitted that if the Tribunal were against him on that issue, any costs order should not be enforced without the permission of the Tribunal. Finally, it was submitted, if any award for costs were made, the costs should be reduced from the figure claimed; it was unlikely that the Applicant would be awarded all of the costs claimed if there were a detailed assessment.

58. In response to a question from the Tribunal about whether or not the costs would be a contingent liability in the Respondent's bankruptcy, Mr Treverton-Jones was unable to assist. The Clerk to the Tribunal referred those present to the Nortel/Lehman case aka Bloom v Pensions Regulator [2013] UKSC 52 ("Nortel") in which it was indicated (in particular at paragraphs 87 to 93) that where the proceedings began before the bankruptcy order was made, the costs of the proceedings would be a contingent liability in the bankruptcy and would be a debt which fell within the bankruptcy.

59. Mr Bullock submitted that if any costs award were not made as an "outright" order, the Applicant's position as against other creditors may be prejudiced. Mr Treverton-Jones submitted that the Tribunal may consider a perhaps rather complex form of

order which provided for different costs orders dependent on whether or not the award would fall into the bankruptcy.

The Tribunal's Decision

60. The Tribunal considered carefully the submissions of the parties.

61. This was an unusual case, which was determined on its own particular facts. The Respondent had successfully appealed against the Tribunal's earlier decision on sanction, and this division had reached a different conclusion to that reached at the September 2014 hearing. The High Court had indicated that the earlier division had gone too far in its findings and had therefore erred in law in reaching the decision to strike off the Respondent. This hearing had been necessitated because of the Tribunal's earlier error, rather than due to any fault on the part of the Respondent. In some respects, this hearing was a continuation of the earlier hearing but on the facts of this matter, it was not appropriate to order this Respondent to pay any costs towards the Applicant's costs of this part of the case.

62. The Tribunal noted that the Applicant could not be criticised for its conduct of the proceedings. The Tribunal wished to comment that the hearing bundle had been presented with particular care, and asked Mr Bullock to pass on the Tribunal's thanks to those involved in its preparation. The Tribunal had no criticism of the way in which the matter had been presented by the Applicant. The amount of costs claimed on the schedule was reasonable and proportionate to the issues in the case. However, there would be no order for costs.

Statement of Full Order

63.

1. The Tribunal Ordered that the Respondent, RUKHSANA JABEEN KIANI, solicitor, be suspended from practice as a solicitor for the period of one year which commenced on the 9th day of September 2014, i.e. the period of suspension terminated on 8 September 2015.

2. The Tribunal further Ordered that the Respondent shall be subject to conditions imposed by the Tribunal as follows:-

2.1 For the period of two years commencing on the 19th day of April 2016, the Respondent may not hold client money;

2.2 For the period commencing on the 19th day of April 2016, the Respondent may not practise as a sole practitioner, sole manager or sole owner of an authorised body;

2.3 For the period commencing on the 19th day of April 2016, the Respondent may not practise as a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP), Alternative Business Structure (ABS) or other Recognised Body;

2.4 From 19th day of April 2016, the Respondent may not work as a solicitor other than in employment approved by the Solicitors Regulation Authority.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at 2.2, 2.3 and 2.4 above.

4. There be no order as to costs.

Dated this 3rd day of May 2016
On behalf of the Tribunal

J. C. Chesterton
Chairman

APPENDIX A
REDACTED JUDGMENT OF THE HEARING OF 8 & 9 SEPTEMBER 2014

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11204-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RUKHSANA JABEEN KIANI Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr P. Housego
Mr P. Wyatt

Date of Hearing: 8 & 9 September 2014

Appearances

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

The Respondent appeared and was represented by Ms Linda Lee, solicitor of RadcliffesLeBrasseur, 5 Great College Street, Westminster, London, SW1P 3SJ.

JUDGMENT

Allegations

l. The allegations against the Respondent, Rukhsana Jabeen Kiani, were that: -

1.1 In breach of Rule 7 of the Solicitors Accounts Rules 1998 she failed to remedy breaches thereof promptly on discovery;

1.2 In breach of Rule 22(1)(e) of the said Accounts Rules client money was withdrawn from client account when instructions to do so were neither given nor confirmed in writing;

1.3 In breach of Rule 22 (5) of the said Accounts Rules she withdrew money in relation to a particular client which exceeded the money held on behalf of that client thereby creating a shortage on client account;

1.4 In breach of Rule 32 of the said Accounts Rules:

1.4.1 she failed to keep accounting records properly written up at all times to show her dealings with client money received held or paid;

1.4.2 she failed to record all dealings with client money in a client ledger;

1.4.3 the current balance on each client ledger was not always shown or readily ascertainable;

1.5 She failed to act with integrity contrary to Rule 1.02 of the said Code of Conduct 2007;

1.6 She failed to have sufficient regard for her duties under the Money Laundering Regulations 2007 and/or the Law Society's Blue Card Warning on money-laundering and thereby breached Rule 1.06 of the said Code of Conduct 2007;

1.7 She 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 said Code of Conduct 2007 and/or note (ix) to Rule 15 of the said Accounts Rules;

1.8 She failed to act in the best interests of clients contrary to Rule 1.04 of the said Code.

Documents

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

Applicant:

- Application dated 25 November 2013;
- Rule S statement dated 25 November 2013, together with exhibit bundle DEB/1 (including additional pages 293 and 294);
- Particulars pursuant to paragraph 8.1 of the Tribunal's directions order dated 7 February 2014 ("the money laundering particulars");

- Applicant's supplementary bundle;
- Applicant's statement of costs dated 29 August 2014.

Respondent:

- Respondent's bundle 1-
  - Witness statement of the Respondent;
  - Witness statement of Naseer Ahmed;
  - Witness statement of Naveed Anwar;
  - Witness statement of Mohammad Altaf;
  - Witness statement of Sajid Khan;
  - Report of Dr John Bradley;
  - Medical Records of the Respondent;

- Respondent's bundle 2-
  - Papers relating to car-jacking incident;
  - Papers relating to Mohammad Altaf matter;
  - Papers relating to Sajid Khan matter;
  - Papers relating to Mr "M" matter;
  - Papers relating to Ms "A" matter;
  - Papers relating to Ms ''B"matter;
  - Papers relating to Mrs "K" matter

- Respondent's bundle 3-
  - Further documents relating to Mr Altaf s statement.
  - Addendum Witness statement of Mohammad Altaf, dated 9 September 2014;
  - Copy Chapter 4 "Statements of Principle and Code of Practice for Approved Persons" (Financial Conduct Authority);
  - Bundle of personal testimonials relating to the Respondent;
  - Respondent's personal financial statement;

Tribunal:

- Memorandum of case management hearing on 3 February 2014;
- Memorandum. of case management hearing on 23 June 2014, together with witness statement of the Respondent dated 19 June 2014;

Preliminary Matter (1)

3. Mr Barton indicated that the further documents relating to Mr Altaf's statement had been served upon him by the Respondent by email over the weekend. He understood that Mr Altaf would refer to these documents in his evidence.

4. In Mr Barton's submission, the Applicant was entitled to understand what Mr Altaf had to say and was entitled to be given proper notice of it. Whilst Mr Barton had no objection to the Tribunal seeing the documents, he did not appreciate their relevance. Mr Barton understood that Mr Altaf would give evidence relating to authenticity, in particular there was an issue over the authenticity of the document at page 262 of exhibit bundle DEB/I, which was a letter allegedly from Barclays Bank to Mr Altaf. Mr Barton therefore invited clarification upon the point.

5. Ms Lee said that Mr Altaf had produced these papers late on 5 September. They related to documents he had given to the Respondent which at the time be had believed to be authentic. These new documents could therefore be viewed as an expansion of evidence based on questions put to the Respondent by Mr Barton. Paragraph 11 of Mr Altaf's statement would need to be amended to reflect these changes and could be provided to Mr Barton before the second day of the hearing, tomorrow.

The Tribunal's Decision on Preliminary Matter (1)

6. The Tribunal would grant leave for the statement of Mr Altaf to be amended, to include the point dealt with in the further documentation. The amended statement should be served upon the Applicant by 6 pm, that day.

7. The Tribunal indicated that it was dissatisfied with such a late addition to the evidence and that consideration would be given to the circumstances of the amendment when the weight to be given to the evidence was considered in due course.

Preliminary Matter (2)

8. Mr Barton also sought clarification as to the purpose of the psychiatric evidence adduced by the Respondent being admitted into evidence; it was unclear as to whether this evidence would be used in mitigation or as part of the Respondent's defence.

9. The Respondent had already indicated which allegations were accepted and which were denied. In the case of those allegations that bad been denied no "state of mind" was involved with the possible exception of allegation 1.5. A lack of integrity in this case stopped short of dishonesty and the guidance in Hoodless and Blackwell v FSA [2003] FSMT 007-

> ''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."

had been adopted previously by the Tribunal. The Applicant did not allege dishonesty and if the psychiatric evidence was confined to allegation 1.5 then the Applicant was entitled to know how it would be used.

10. Ms Lee responded that the question of integrity would be dealt with in her submissions. The psychiatric evidence sought to explain the Respondent's behaviour at the relevant time and in addition went to mitigation. This evidence did not therefore constitute a defence in its own right.

Factual Background

11. The Respondent was born in 1959 and admitted to the Roll of Solicitors in 1985. Her name remains on the Roll.

12. At all material times she practised on her own account as R Kiani Solicitors ("the Firm") from offices at 736 High Road, Leyton, London ElO 6AA.

13. The Respondent alone operated the Firm's client account.

14. On 7 December 2010 Lisa Bridges, an investigation officer ("the Officer'') employed by the Solicitors Regulation Authority ("the SRA"), commenced an investigation of the firm's books of account and other documents at the Firm. Her consequential report was dated 29 November 2011 ("the Report").

15. On 21 November 2013 the Officer prepared a supplementary Report which corrected errors in the arithmetic at paragraphs 23, 25 and 26 of the Report.

16. The Report was sent to the Respondent by the SRA on 29 November 2011 with a request that she explain the breaches identified, and the Respondent replied on 7 February 2012.

17. The SRA wrote again on 28 January 2013 and sought further explanations. These were provided by the Respondent on 3 April 2013.

18. On 18 June 2013 the SRA decided to refer her conduct to the Tribunal.

Allegation 1.1

19. A minimum cash shortage of £42,538.84 existed as at 16 September 2010, which was agreed by the Respondent. She stated to the Officer that it arose wholly from overpayments made during the conduct of Mr Altaf's purchase of a property in Leyton.

20. On 7 July 2010 a deposit of £25,600 was paid to the vendor's solicitors and this left the client ledger with a credit balance of £98.08.

21. On 23 August 2010 a further payment of £7,371.26 was made from client account on Mr Altaf s behalf to the vendor's solicitors, and as the Firm held only £98.08 the payment created an immediate shortage of £7,273.18. The payment did not appear in the ledger but it was seen by the Officer on the client account bank statement.

22. On 13 September 2010, £20,000 was noted as having been received from Mr Altaf's niece. The mortgage funds of £165,447.07 were received into client account on 15 September 2010 along with payments from Mr Altaf being two cheques or £12,500 and £25,000, and cash of £18,000. These payments totalled £240,947.07. On 16 September 2010 the purchase was completed and £238,712.73 was sent to the vendor's solicitors leaving a balance on client account of £2,234.34.

23. The two cheques from Mr Altaf were not met on presentation and the Respondent was notified of this on 20 September 20 l0. This created a further shortage of £37,500. In total, the shortage on client account amounted to £42,538.84.

24. On 12 October 2010 £15,000 was transferred from client matter ledger "A/A". On 19 October 2010 Mr Altaf made a payment of £5,000 into client account, and a further £5,000 on the 13 December 2010 in order to reduce the shortfall.

25. Mr Altaf's client ledger as presented to the Officer showed a positive balance of £22,333.42 yet at the time it was overdrawn.

26. On 15 December 2010 the Respondent was asked by the Officer to advise when the shortage would be rectified. On 22 December 2010 the Officer wrote to the Respondent to request an accurate ledger that would show the correct balance on client account.

27. The Officer returned to the Firm on 16 January 2011 and was provided with a recreated ledger. This showed a debit balance of £10,167.58 as at 4 January 2011, and the Respondent transferred that sum from office to client account on 14 January 2011.

28. The Officer spoke to the Respondent about the shortage on 16 February 2011 and she was asked to account for the delay in replacing the shortfall. She said that it was because Mr Altaf had said there was a technical problem with the bank and he was very confident that the funds would be replaced.

29. Mr Altaf made three other payments between 7 March and 4 April 2011 totalling £4,000 to further reduce the shortage to £3,371.26 as at 4 April 2011. At the date of the Report the Officer had no further communication about the shortage replacement and the inaccurate ledger remained uncorrected.

Allegation 1.2

30. The Respondent authorised a number of inter-ledger transfers in the absence of either written authority from the clients for the withdrawals, or written confirmation from the Respondent to the clients.

31. Each transfer was for £60,000. The ledgers involved were those relating to clients Mr Sajid Khan, Mr and Mrs "A", Mr M, and Ms A and the transfers took place in a sequence.

32. The first such transfer was from the ledger in the name of Mr Khan to the ledger of Mr and Mrs A. On the 3 June 2009 the Finn was instructed in connection with the purchase by Mr and Mrs A of a property in Gillingham, Kent. The purchase price was £142,000. Mr and Mrs A borrowed £72,000 from Alliance & Leicester.

33. The Respondent signed an authority dated 31 July 2009 requesting that £60,000 be transferred from a ledger in the name of Mr Khan to the purchase ledger of Mr and Mrs A. The ledger showed that transfer was made on the same date. There was no authority from Mr Khan for the transfer, neither was there any correspondence on Mr Khan's matter pertaining to it other than an authorisation from the Respondent.

34. On 31 July 2009 the purchase was completed and Mr Khan's money was utilised. It had become available to him that day as a result of his sale of two properties in London El7, the sale proceeds of those properties being £230,000.

35. The second such transfer was from the ledger in the name of Mr M to Mr Khan. On 18 August 2009 the Respondent signed an authority for £60,000 to be transferred to Mr Khan from Mr M, for whom the Finn was instructed to act in connection with his purchase of a property in Leytonstone. There did not appear to be any signed authority from Mr M in respect of that transfer.

36. In an interview with the Respondent on 16 April 2011, some 20 months later, the Officer spoke with the Respondent about the matter and asked her what authority she had to transfer and withdraw the monies. She said that she was chasing Mr Khan for an explanation because she believed he owed money to Mr A. The Respondent said that she was sure that enquiries would have been made at the time. She was asked if the clients knew about the transfers. She said she thought they did know and had given an authority but not in writing.

37. The third such transfer occurred when in August 2009 the Firm was instructed to act for Ms A in connection with her assignment of a lease. On 10 August 2009 £78,000 was received from the buyer's solicitors. The transaction was completed on 27 August 2009 and on that day the sum of £60,000 was transferred to Mr M's ledger, which enabled him to complete his purchase. There was no contemporaneous documentation on the file other than an attendance note dated 26 August 2009 of a telephone conversation of the Respondent with her client's father stating "pay £60,000 to M[ ]"; there was nothing from the client, Ms A.

38. On 7 April 2011 the Officer discussed the inter-client transfers with the Respondent. The Respondent informed the Officer that if she had a client who was urgently in need of completion funds, she would contact another client and ask for the provision of a short term loan. She said that she did not draw up any loan agreements for these.

39. The withdrawals from client account were not accompanied by written authorities from the clients specified nor did the Respondent write to them to confirm oral instructions. There were no attendance notes recording any such oral instructions.

40. There was also an isolated transfer from a ledger in the name of Mr ''N' to a Ms "B" in the sum of £4,000. These monies appeared in the completion statement for Ms B's purchase of a property in Wood Green. There was no authority for the transfer signed by either of the parties.

Allegation 1.3

41. The Respondent debited Mr Altaf's ledger with the payment of £7,371.26 on 23 August 2009 when the Firm held only £98.08.

42. The Respondent further debited his ledger with the payment of £238.712.73 on 16 September 2009 when two cheques totalling £37,500 paid in the previous day were not met.

Allegation 1.4

43. The Client List of Balances did not show client ledgers which had debit balances.

44. The ledger relating to Mr Altaf showed a credit balance of £22,333.42 at 31 October 2010 whereas its true balance was a debit of £22,538.84.

45. The payment out of £7,371.26 on Mr Altaf s behalf on 23 August 2010 was not recorded in his ledger.

46. A receipt on behalf of another client of £35,500 on 14 September 2009 was not recorded in his ledger.

Allegation 1.5
Transaction One

47. The Firm was instructed by Ms A in respect of her assignment of a lease. The buyer was represented by another firm of solicitors ("the other firm").

48. The assignment of the lease was completed on 27 August 2009 and the completion statement showed there was a NatWest loan secured against the property by charge and that the amount owed was £51,955.34.

49. An attendance note of a conversation on 26 August 2009, the day before completion, confirmed that contracts had been exchanged and monies released to the Respondent.

50. Following completion, as set out in the note, the Respondent was to carry out all post completion work which included the redemption of the NatWest loan and the discharge of the charge at HMLR. On inspection of the matter file the Officer saw nothing that demonstrated the loan had been repaid by the Respondent in accordance with the attendance note. There was correspondence from the buyer's solicitors covering the period 17 November 2009 to 9 February 2011.

51. Some £60,000 of the sale proceeds received was transferred to Mr M's ledger on 27 August 2009, the same day as the funds were released. In addition £14,104.00 was sent to Ms A on 3 September 2009. These payments together with a repayment to the buyers accounted for the entire sale proceeds. There was thus no money available to repay the Nat West loan.

52. The buyer's solicitors expected the loan to be repaid and to be provided with Form DSI/END 1by the Respondent; they asked repeatedly for it in their letters, emails and telephone calls. There was nothing in the correspondence to demonstrate that the Respondent had informed them at any stage that she had not herself discharged the charge. On 17 November 2009 she stated "we are still awaiting the DS1 Form..." By mid-February 2010 it had still not been dealt with and there was a chasing call on 12 February 2010 from the other firm. The Respondent's letter of 16 February 2010 to the other firm said that "...delays have occurred due to our client's position and circumstances" and "We will pursue the DS1 with the Bank".

53. Although in a letter of 1 March 2010 the other firm asserted that an undertaking had been given in relation to the DS 1, that was not so, as they later confirmed to the SRA.

54. Correspondence continued into March and April 2010. The Respondent dealt with it by reasserting that the Firm had been chasing the bank on a regular basis. There were two further telephone calls from the other firm on 28 May 2010 and 1 June 2010.

55. On 7 June 2010 the matter was referred to the SRA. The communications between the other firm and the Respondent continued into November 2010 concluding on 9 February 2011 when the Respondent confirmed discharge of the mortgage.

56. On 16 February 2011 the Respondent was questioned about the matter by the Officer and Mr Ferrari (''the Officers"), a Senior Investigation Officer of the SRA. She said that as far as she could recall, it was initially the Firm's instructions to redeem the loan but she thought that later on the loan was, in effect, to be transferred to another security.

57. The Officer returned to see the Respondent on 5 April 2011. On that occasion the Respondent gave the Officer a letter from Dr Anwar dated 4 March 2011. The letter stated that "...I instructed you, as new owner of the company, to transfer the funds held by you to Mr [M]'s matter...In return, I agreed to repay the company's loan account with NatWest bank directly. I made arrangements to pay but unfortunately due to some unforeseen issue with the bank and I having travelled abroad, the re-payment of the loan was delayed and was finally cleared in January 2011".

58. There were no contemporaneous documents concerning Dr Anwar seen by the Officer.

59. The Officer asked the Respondent about the inconsistency between the letter of 4 March 2011 and the instruction that the Respondent had the night before completion, namely that she was to discharge the loan. She said that she would need to contact her client Ms A to establish what had happened.

60. A company search of RFF showed that Dr Anwar had never been a director. The Officer asked the Respondent why she had transferred the money on an instruction from a third party apparently in contradiction to an instruction given the day before. She said she must have seen papers demonstrating that Dr Anwar had become a director.

61. The Officer wrote to the Respondent on 20 April 2011 seeking further clarification. The Respondent replied on S May 2011 and produced a letter dated 27 August 2009 from Mr A that the Officer had not seen on the matter file. In that letter it was said that Dr Anwar was now the new owner of RFF and "please make the sale funds available to him as he will now be responsible for all the company matters".

Transaction Two

62. The Respondent supervised the conduct of Mr Khan's sale of his two properties in London El7. A fax was sent addressed to the NatWest bank on 21July 2009 ready for completion on 31 July asking for a redemption statement to redeem the mortgage. The Royal Bank of Scotland ("RBS") replied by requiring the full sale proceeds. On the day of completion £230,000 was received and £60,000 was transferred to the ledger in the name of Mr and Mrs A.

63. On the day of completion the Firm sent a fax to the buyer's solicitor stating that the mortgage had been redeemed.

64. On 18 August 2009 the Respondent authorised the transfer to Mr Khan's ledger of the £60,000 from Mr M. On the same day the entire completion funds on Mr Khan's sales were sent to the bank.

65. When the Officer wrote to the Respondent on 20 April 2011 one of her concerns was the inaccurate statement to the buyer' s solicitors that the mortgage had been redeemed when the means of doing so had been paid away in part to another client. It had taken the transfer in of funds from Mr M to enable the mortgage to be discharged.

66. With her letter dated S May 2011, the Respondent produced an email dated 3 August 2009 from the Firm to the buyer's solicitors which stated that the redemption of the charge was in progress and had not yet been redeemed. The Officer had not seen this email before. The Respondent also produced a letter from the buyer's solicitors dated 4 August 2009 which made no mention of the email. In her accompanying letter the Respondent said that as the charge would not be released until settlement of the amounts owing to RBS was reached, the bank was never in her professional judgement at risk. She also said that the redemption was done promptly after the resolution of the dispute.

Allegation 1.6
Matter One

67. On 15 September 2010 the Respondent received £18,000 in cash into her client account as part payment towards the purchase of the property in Leyton by her client Mr Altaf. The amount was noted on the bank paying-in slip as consisting of £16,020 in £20 notes, £1,580 in £10 notes and £350 in £5 notes. The payment was undocumented and there were no records to show that she had asked any questions about its origin. When questioned on 1 December 2010 the Respondent stated she was not aware it was a cash payment but if it was, it was created by her client removing funds from one account to another in the same branch of the bank.

68. On 16 February 2011 the Officer spoke again with the Respondent who said that she had spoken with her client as a result of which she understood the money had not been physically withdrawn before being paid in.

69. The Officer pointed out to her that the paying in slip set out the different denominations the cash comprised and the Respondent said she would need to speak with her client again and go through it with him.

70. On returning to the Firm on 5 April 2011 the Officer was shown a letter from the client dated 7 March 2011. 1n that letter Mr Altaf said that he had "checked my papers and confirm that £16,000 was money taken out by me from my savings account into my current account and then withdrawn to deposit into your account, I did this as the Bank teller told me that a cheque may not be credited until 5pm that day which would be too late for you to complete that day."

Matter Two

71. The Respondent had the conduct of the purchase of a property in Ilford for a Mrs K in May 2010. The client ledger showed that £124,000 was received between 13 and 24 May 2010. One payment of £71,000 was made up of the several cheques from different persons. The deposits had been received into client bank account prior to any date having been set for exchange of contracts.

72. On 21 May 2010 the seller's solicitors wrote to the Respondent to tell her that the sale was no longer proceeding. The matter file contained an attendance note recording a conversation between the Respondent and a Mr Patel setting out his instructions for the return of the money. On 2 June 2010 the Respondent sent cheques out in accordance with his direction, to persons other than these from whom the funds had been received.

73. On 16 February 2011 the Officers asked the Respondent what checks had been made on the sources of the various sums of money received. She responded by saying that she had seen the bank statements relating to the accounts on which the cheques were drawn.

74. She was then asked for the authority by which Mr Patel was able to instruct her to distribute the funds to different recipients. He was not a client and the Respondent was asked why there were no identification documents relating to him. The Respondent said that he had been at the initial meeting when she had received instructions. However she was unclear as to the relationship between Mr Patel and the client; she initially said that he was a brother of the client but then said he may be a brother-in-law.

Matter Three

75. The Respondent was instructed to act for Ms B in connection with her purchase of a property in London N22. The client ledger showed the receipt of £70,000 from another finn of solicitors, Aamir Zane, in March 2009 and its distribution to three recipients over about a month in May and June 2009. The matter file contained nothing to explain the receipt or payments.

76. The Respondent was the only person authorised to operate client account and told the Officer she had no knowledge of the transaction.

77. On 2 July 2009 £65,000 was received into client account from a Mr "FS" and there was no documentation to account for it or to show what enquiries had been made by the Respondent. The Respondent said that she thought he was a family member but she would have to go back and ask the client.

Allegation 1.7

78. In Ms B's matter the client account ledger showed that the monies from "Aamir Zane Sol" were received before the client care letter was sent out on 11 March 2009.

79. Until 22 April 2009 the Respondent purported to be practising in partnership with Mr Ahmar Hussain using the name of Aamir Zane solicitors and the Respondent also held Mr Ahmar Hussain out as being a partner in the Finn.

80. A review of the file provided no information or documents to explain the transactions which appeared to have taken place without an underlying legal transaction.

81. When questioned on 7 April 2011 the Respondent stated that she had no knowledge of either the receipt or the payments. She suggested that her client might have had dealings with Aamir Zane solicitors and transferred the money to the Firm.

82. In her letter to the SRA dated 7 February 2012 the Respondent stated that the client had money on account with other solicitors and wanted to purchase a property. She asked her former solicitors to transfer the money to her. The Respondent did not produce any documents relating to the payment in or the payments out.

83. The Officer saw no evidence of client identity on the matter file.

Allegation 1.8
Purchase One

84. The Respondent failed to notify her lender client in Ms B's transaction that some of the purchase money was received from a third party, Mr FS.

85. The Respondent was asked about this on 7 April 2011, and in the absence of a substantive response the Officer wrote to her on 20 April.

86. The Respondent's reply stated that the third party was the client's business partner, and that he paid the stated sum of money to her for his share of the sale of the assets. The monies therefore belonged to the client, so it was not necessary to inform the lender.

87. The Officer observed that the matter file contained no documentation to this effect.

Purchase Two

88. In respect of Mrs K's purchase of the property in Ilford, the Respondent received monies apparently belonging to a number of different persons. She then acted on instructions to send the monies to different recipients or in different amounts; the senders did not get their money back. This was done without any apparent instructions being taken from them. The client care letter dated 14 May 2010 stated that this was a family purchase and members of the client's family, such as her brothers in law, had the authority to give instructions. However, the instructions were received from an apparently unconnected third party, Mr Patel.

Witnesses

89. The following witnesses gave sworn oral evidence:

- Mr Stephen Wallbank, investigation officer of the SRA;
- The Respondent, Ms Rukhsana Jabeen Kiani;
- Dr John Bradley;
- Mr Mohammad Altaf;
- Mr Naveed Anwar;
- Mr Naseer Ahmed.

The Submissions of the Applicant

90. Mr Barton said that he understood that allegations 1.1, 1.2, 1.3 and 1.4 were all admitted by the Respondent and all the other allegations were denied. The Respondent took no issue with any of the documents adduced by the Applicant or with the underlying facts but Mr Barton himself challenged the authenticity of a letter purportedly from Barclays Bank dated 23 September 2010 which was the document at page 262 of DEB/1.

91. In Mr Barton's submission, allegation 1.2 was not of form but of substance; there had been a series of movements of sizeable sums of money for which there was no recorded reason. The Officer had been concerned that there were no documents of a contemporaneous nature on files confirming that the clients had known of these movements. The record of what the Respondent had said when she had been asked to explain the movements by the Officer was contained in the Report:

> "Mrs Kiani said that if she had a client who was in need of completion funds urgently, she would contact another client of the firm, for whom she was holding funds, and ask them to provide the other client with a short term loan. She said that she did not draw up any loan agreements for these. Ms Bridges asked Mrs Kiani if she considered it acceptable for a solicitor to facilitate inter-client loans. Mrs Kiani said it was not something she would be looking to do again."

92. Allegation 1.5 was one of lack of integrity which arose out of two transactions and the Respondent's dealings with the other firms of solicitors, the NatWest Bank and RBS.

93 In Ms A's matter, the Respondent had failed to straightforwardly tell the other firm that she had no monies with which to discharge the mortgage upon the property. In Mr Barton's submission the documents in exhibit bundle DEB/1 spoke for themselves; the Respondent had not told the other firm that the mortgage was not to be discharged by her, that her letters lead them to think that it was, and that firm's letters made it plain that they had thought that she was doing it.

94. In regard to Mr Khan's matter, it was Mr Barton's submission that that transaction had lacked integrity. An inaccurate statement had been made to the buyer's solicitors that the mortgage had been redeemed and the full completion funds had not been sent immediately to the bank. The Respondent's explanation suggested that she had no appreciation whatsoever of the risk to the bank if Mr M did not give his authority for £60,000 of his money to be paid to Mr Khan to enable his mortgage to be paid off. This of course presupposed he had been asked for that authority.

95. Allegation 1.6 was further particularised in the document dated 14 February 2014. The Respondent had been the Firm's money laundering reporting officer.

96. On 15 September 2010 the Firm had received £18,000 in cash towards Mr Altaf's purchase and there had been no explanation as to how the client had been able to deposit cash; whilst the Respondent had said that there had been a direct bank to bank transfer the Officer had been shown a paying in slip with the various cash amounts on it.

97. The second aspect of this allegation arose out of Mrs K's purchase. Mr Patel who had authorised the distribution of the funds was not a client. The Officer had reported that she had asked the Respondent who Mr Patel was and what authority he had to authorise the distribution of funds.

> "Mrs Kiani stated that he was at the initial meeting when she had received instructions. Ms Bridges queried why there were no identification documents for Mr Patel on the client matter file, when there was for the client and her two brothers-in-law as detailed in the client care letter. Mrs Kiani was unclear as to the relationship between Mr Patel and the client, she initially suggested he was a brother of the client but then said he may be a brother-in-law."

98. In Mr Barton's submission the Respondent, as the Firm's money laundering reporting officer, should have had been clear as to Mr Patel's position.

99. Allegation 1.7 concerned £70,000 which had been received into client account from Aamir Zane solicitors and subsequently distributed without any apparent underlying legal transaction. Mr Barton noted that the receipt of the monies predated the retainer. The Report had stated that "A review of the client matter file did not provide any information or documentation concerning these transactions. When Ms Bridges spoke with Mrs Kiani on 7 April 2011, Mrs Kiani said that she had no knowledge of the £70,000 transaction. She suggested that perhaps her client had had dealings with the firm Aamir Zane and had then transferred the matter and outstanding balance to her firm."

100. Mr Barton said that allegation 1.8 was put on the basis that the lenders were not informed that the borrowers were not obtaining the balance on their purchases from their own resources.

<u>The evidence of Stephen Wallbank</u>

101. Mr Wallbank confirmed that he was an investigation officer with the SRA and had worked for the organisation for 12 years. He was present as the Officer in the case was on long term sick leave. He had familiarised himself with both exhibit bundle DEB/1 and with the supplementary bundle and he confirmed the Report on the Firm dated 29 November 2011 and the Officer's supplementary statement dated 21 November 2013 were true to the best of his knowledge and belief.

102. In cross examination by Ms Lee, Mr Wallbank confirmed that it was clear from the interview held with the Respondent on 16 February 2011 that she was unable at that stage to give correct and full information to the Officers.

103. In questioning as to whether any clients had suffered loss, Mr Wallbank referred to the shortage on the client account. He was not aware that any client had complained.

The Evidence of the Respondent, Rukhsana Jabeen Kiani

104. The Respondent confirmed that allegations 1.1 - 1.4 were admitted. In relation to Mr Attars matter she said that she believed that if amounts were shown on her bank account statement then they were cleared funds, she had checked online and the amounts had shown as credits. In addition Mr Altaf had said that monies would be cleared and then transferred and she was satisfied that he had funds. Days later she was notified that the two payments made by cheque had been recalled. She had telephoned Mr Altaf who had not known why this had occurred but had said he would make enquiries. She then received the letter from Barclays Bank dated the 23 September 2010 which acknowledged that there had been a technical error. She had no reason to suspect any problem with this letter. The shortfall had been repaid over the next few months and had finally been cleared on 5 April 2011, at the time she had had limited resources to repay these monies herself.

105. So far as allegation 1.5 was concerned this was denied, she had not acted to reduce her professional standing and had not set out to mislead or compromise her integrity. Allegation 1.6 was denied. Mr Altaf was a known client who had the funding and was aware of his obligations. There was no question of money laundering and the monies had been replaced. The K's were well-known business people who had a £193,000 facility with the bank, as could be seen at page 66 of her exhibit bundle. The matter of Ms B involved a bookkeeping error. Allegation 1.7 was denied on the same basis, that a bookkeeping error had occurred. Allegation 1.8 was denied. In the case of Mrs K there was no lender and in the case of Ms B monies had come in from her business partner to buy out her share of the business; it was not a loan.

106. The Respondent told the Tribunal about that the majority of her clients came from her community and she said that business clients would often come into the office without an appointment and were happy to give their instructions verbally.

107. In 2009 her workload had decreased as it was dependent upon conveyancing; she had started with seven staff but had ended the year with just one caseworker and one administrative assistant. She had had to employ part-time temporary bookkeepers and she now appreciated that mistakes had been made on a number of matters.

108. She had given the caseworker, who had been with her since March 2004, more and more responsibility. She accepted that she should have been checking his work as he had become careless.

109. The Respondent gave details of her personal circumstances and of a car-jacking incident at the end of 2008 that had affected her very badly. She had suffered intensely for a period of seven to eight months and still felt upset as a result of it.

Allegations 1.5-1.8
The matter of Ms B

110. The Respondent said that she had checked and found evidence of Ms B's identification with the accounts paperwork and this was why it was not on the file. She had produced that evidence, a copy of Ms B's passport photograph, as part of her exhibits. Her discovery had happened after the Officer had asked for the evidence.

111. Ms B had a clothing retail business with Mr FS, who was not a client. Ms B was to get funds for the purchase of the property from Mr FS which represented her share of the business.

112. Mr N was also a client and there had been a problem with his client ledger, he had received £4,000 which should have gone to another client, Mr C. That other client had introduced Ms B to the Finn. The Respondent could only assume that the bookkeeper had made a mistake. She should have asked to check the file but had relied on the caseworker.

The matter of Mr Khan

113. The Respondent said that the bank had wanted the full proceeds of the sale of Mr Khan's two properties but he had not agreed, he was adamant that the bank should accept £175,000 and he wanted Mr Altaf to have some of the sale proceeds as he owed him money. She had asked Mr Khan what would happen if the bank did not agree and he had said that he had the monies to make the payment. Ultimately, the bank had received the monies due and the bank had issued a release letter. She realised that she should have waited for the bank to confirm before releasing the monies to the client and this was now her practice.

The matter of Ms A

114. Ms A was a nominee director of her father's business. Both she and her father had both come to see the Respondent and had told her that they wished to sell the business and the sale completed on 27 August. Mr Anwar was known to Mr A and be was also engaged in the fast food business. Mr Anwar and Ms A's father had come to see the Respondent before completion and told her that they wished to retain the company, keep the business and change directors. Mr Anwar became the beneficial owner. She had accepted instructions from Mr Anwar, subsequent to instructions from Ms A's father, as she had previously seen both of them and knew their intentions. There were a number of documents that said Ms A's father would file the company documents but he did not and some months later she was told that Ms A would be dealing with the matter, but it never happened and Mr Anwar had to pay all the funds back to the bank. There had been two problems with the transaction. Ms A had already resigned as the company secretary and therefore the transfer documentation had been returned by the Land Registry and Ms A did not file the company documents so the company was never transferred to Mr Anwar. The Respondent said that she would not now accept these instructions and would obtain a letter from the bank first. However no payments were missed to the bank and she had given no undertaking to the other firm to discharge the mortgage as they had not required one. It had all been unfortunate and the matter had been delayed longer than had been anticipated. It had not been her

intention to mislead the other firm and she had been doing her best; even if she had given them full information they would still have had to wait and in any event she did not have the client instructions to release all the information to them. The Respondent had indicated in her letter dated 16 February 2010 that delays had occurred due to the client's position and circumstances and she thought she had answered all of the other firm's queries; there had been no intention to withhold information.

The matter of Mrs K

115. The Ks were a family group, referred to sometimes as the "Patel family" because of their ethnic heritage. She had obtained a photocopy of the driving licence of Mr K as could be seen from her exhibit bundle. The family were buying a property together and cheques had come into client account from a number of family members. The transaction had failed and one of these family members, a Mr B, had not received his money back through the Firm as she had been told that he had already been paid. When the Officer had raised the matter she bad obtained a letter from Mr B dated 13 February 2012 which said:

> "this is to confirm that I am Mr [B] and I had loaned £5000 to my uncle Mr[K] in the form of a cheque for the purchase of family property in May 2010. When the purchase did not go through the solicitors returned the cheque back to my uncle [K] as he had already repaid me direct."

The Respondent confirmed that she was the Firm's money laundering reporting officer and had attended courses in 2004, 2010 and 2013.

Cross-examination of the Respondent by Mr Barton
Allegations 1.1-1.4

116. The Respondent agreed that by the time she had signed the profession history form shown in the Applicant's supplementary bundle she was aware of the difficulties with Mr Altaf's returned cheques. It was put to her by Mr Barton that she had not volunteered the information to the Officer and she replied that there had been a discussion but she could not recall at which point it had been raised. Mr Barton said that it was only after the Officer had written to her and asked for a correct version that the ledger had shown the true position. She responded that the bookkeeper had said there were pending cheques and it had taken a few months for Mr Altaf to repay the money. So far as she was aware the monies were stuck in Barclays Bank. Mr Barton asked her to look at the letter, apparently from Barclays Bank, which indicated that the matter should be resolved "within 7 days". The Respondent said that she had never heard any more from Barclays Bank about the matter.

117 The Respondent confirmed that she was aware of the Accounts Rules requirement for instructions to be in writing before a transfer of monies could be made from one client account to another. In this case instructions had been given orally and the clients had said that they would confirm them in writing but they had not done so. The Respondent said that she believed that these four transfers were the only occasions when such transfers had been made.

118. The Respondent was asked about the authority to Barclays Bank, which when signed by Mr Altaf would authorise the Bank to disclose information to Mr Barton concerning the letter dated 23 September 2010. The Respondent said that she accepted that it was important but had not been able to obtain it from Mr Altaf. She had given the authority to Mr Altaf and he had not said whether he would sign it but she did not think he had any objection to it; he had said he would think about it.

119. Mr Barton asked her what had initiated the transfer from Mr Khan's ledger to Mr A's ledger of £60,000. She replied that the clients had spoken to each other and had asked her to make the transfer. She had prepared the memo which was dated 31 July 2009 and authorised the transfer. The money came in and went out of the same day. Unfortunately, she had not made a note of the client's authorisation nor had she written to him; the matter must have been overlooked. She agreed that she had known about the Accounts Rules requirement when she wrote the authorisation memo and agreed that Mr Khan could have made a direct payment to Mr A of the monies that he owed. Mr Barton asked her why she had used client account for these purposes and she responded that Mr A was purchasing property and this was his own money so he did not need to raise money elsewhere. Mr Barton referred the Respondent to that part of the Report which concerned the arrangement of loans between clients. The Respondent said she had told the Officer that as part of a general discussion. She did not relate this discussion to Mr Khan and Mr A; she had said this without thinking back to the Khan matter. She did not arrange loans. Mr Barton suggested that the movement on the ledgers had been made as Mr A was £60,000 short of his purchase. The Respondent said that she was sure that Mr Khan had said that he owed Mr A money.

120. Mr Barton asked what had caused the transfer between Mr M and Mr Khan. The Respondent said that Mr M had owed Mr Khan money but that the request was not documented at the time. He had provided a letter on 20 April 2014. Mr Barton asked the Respondent to look at paragraph 31 of the Report and put it to her that she did not know about the debt at the time the transfer was made. She responded that she could not recall accurately two years later. Mr M had phoned her and asked to make a payment of £60,000 to Mr Khan. She had asked him to confirm that in writing but that did not happen and she did not herself confirm it in writing, which she accepted. There were indeed files with written instructions on them and she could not recall any other inter-ledger transfers.

121. Mr Barton pointed out that £60,000 was paid from Ms A's ledger to Mr M on 27 August 2009 to enable him to complete his own purchase. The Respondent had paid away the entire sale proceeds of the assignment of Ms A's lease. The Respondent agreed that the note dated 26 August 2009 at page 110 of the DEB/I related to Ms A's transaction and was in her handwriting. She had spoken to someone at the other firm of solicitors and, amongst other things, had noted "TRI Assignment with us", she had later spoken to Ms A's father and in her notes of that conversation it said "Then will complete all post-completion matters ...redeem loan with Nat West...pay £60,000 to [M] matter ...". It was put to her that if £60,000 was paid to M she would be unable to redeem the loan with Nat West. Her response was that the loan with Nat West was to be transferred to a new property although she accepted that there was no note of this instruction.

122. The inter-ledger transfers from Mr N to Ms B was authorised by Mr N and the relevant document was not on Ms B's file but on Mr N's file as could be seen in Respondent's bundle 2. This authority was dated 3 July 2009 and the Respondent agreed that it had been disclosed for the first time with her witness statement.

123. In re-examination by Ms Lee the Respondent she had believed Mr Altaf s explanations and had thought that the Barclays bank letter was genuine.

Allegation 1.5

124. The Respondent was asked whether she expected to discharge the Nat West loan when the completion statement relating to Ms A's transaction was prepared. She replied that she did expect to discharge it. The letter to the other firm dated 17 November 2009 was written by her assistant but she acknowledged that her initials were on it. She was asked on what basis she had said that she was awaiting the DS 1 Form and she responded that her instructions had changed, redemption was to be by transfer of the loan to another property. She had not revealed that to the other side due to client confidentiality. Mr Barton went through all of the letters written by the other firm to the firm in 2009 and 2010 and the Respondent acknowledged that she had signed the letter dated 27 January 2007 herself and had written the letter dated 16 February 2010 with her assistant. She said that she did not personally pursue the DS 1 with the bank but only through the clients but denied that the wording of the letters was misleading or improper. The letters had been written quickly and had not been read through. The bank had to provide the DS 1 and there was no intention to mislead.

125. The Respondent said that she could not recall whether she had communicated directly with the bank. She confirmed that she had seen the letter to the other firm of 1 March 2010 which said in particular "We are chasing the bank on a regular basis" and admitted that that was not happening except through the clients. Whilst it appeared to be misleading now her view at the time was that chasing of the bank was happening through the client. The letter dated the 14 April 2010 from the Firm to the other firm had been written by her and said "we have been in contact with the Bank" and she admitted that this was not correct, she had only been in touch with the bank before completion but not afterwards.

126. When asked why the Officer could find no documentation on the matter file for Ms A concerning the NatWest mortgage, the Respondent said that when the Officer had first attended at the Firm she was not sure that the papers on those files were complete as the files had been put together hastily and taken off site in preparation for works required to the building. The file that she had given to the Officer was of the only papers that she could find, she could not say how much was missing.

127. The Respondent was asked about the letter from Ms A's father dated 27 August 2009 stating that Mr Anwar was the new owner of RFF and was questioned about where this letter had come from as it had not been on the file when the Officer reviewed it. The Respondent said she could not recall which file it was on and she must have looked through many files, however these were her instructions. She was asked whether the letter from Ms A's father was genuine and she responded that she believed that it was genuine.

128. Mr Barton asked whether Mr Anwar was a client of the firm and she replied that he was and had a number of matters. The letter dated 4 March 2011 from Dr Anwar to the Firm had been produced at her request.

129. The Respondent confirmed that Dr Anwar was not an officer of the company but he was going to be a shareholder. Furthermore, the instructions were given to pay Mr M after Ms A's father had already said that the debenture was going ahead.

Allegation 1.6

130. The question of Mr Altaf's deposit into client account of £18,000 in cash was raised; the Respondent had said in her letter to the SRA dated 7 February 2012, "it is accepted that there was no documentation on the client file referring to the origin of the £18,000 cash, but it does not follow that I had not asked any questions concerning the source of the funds. In fact I did and the client was asked and I was told by the client that the money was withdrawn from his bank and when he went to deposit the money into my account again the bank asked him to prove the origin of his funds, which he did (and rightly so) and after that process accepted his funds. So it is true to say that I did ask questions but in hindsight should have documented them to prevent any such suspicions." The Respondent said that there was no time lapse and this had all occurred on the same day. The receipt had been provided to her later. She accepted that there was no note on the file but Mr Altaf had been a client for many years. In particular, she said that she did not obtain any evidence from Mr Altaf as to the source of the money as she had already seen his statements when the matter started. She had first known that he had paid cash into client account when he provided receipts just after completion.

131. In the matter of Mrs K the Respondent asserted that the bank statements of the remitters of the sums making up the total of £124,000 were on the file and were now produced in Respondent's bundle 2. She had taken identification for each of them. Mr Patel was the only one queried by the Officer and she had already explained that this referred to Mr K. All of these persons had attended at the office and it was a family transaction. When asked by Mr Barton whether she accepted that monies should have gone back in the same amounts she replied that she had been provided with authority to redistribute in the manner requested. She had followed their instructions.

132. On Ms B's matter she had been aware of the £70,000 from Aamir Zane solicitors on the day it had come in but when she was questioned about it by the Officer time had passed and her recollection was hazy. Mr Barton asked the Respondent why the observation that the £70,000 which had been posted to Ms B's client ledger was a bookkeeping error had only been mentioned for the first time with her witness statement. She replied that as she had gone through matters she had made these discoveries.

133. Mr Barton took the Respondent through the payments out of Ms B's ledger following the receipt of the £70,000. She said that she had acted on the blue request slip without seeing the ledger and had not picked up the initial mistake. The payments should have been on a Mr C's matter and the evidence for this could be seen in Respondent's bundle 2. The record of the requests for payment must also be on Mr C's file and

these payments were for equipment and contractors. The Respondent was asked why the Firm had paid liabilities of this nature for Mr C and whether she was acting for him in relation to the £70,000. She replied that she was not, another firm was doing so, and the money had come into the Firm as Mr C needed it for his matters; he needed to pay the individuals concerned and he had asked that it be done in this way. When asked why the Respondent had not sent the monies to Mr C so that he could pay his creditors, the Respondent replied that clients would use her services in that way and that these payments were for works although they were undocumented. There had been £100,000 in total, as could be seen from one of Mr C's ledgers. While the lease aspect of that matter had been completed on 9 October 2008, the additional £30,000 shown as received on 5 March 2009 was for works to a basement. This was for legal work in the sense that any agreements necessary for such work were within her remit.

134. Mr Barton asked her why her comment to the Officer differed from what she was saying now. She said that that was her explanation before she had made some enquiries into the matter.

135. Mr Barton referred to the Respondent's letter to the SRA dated 7 February 2012 and to her reaction to this part of the Report. She had said that it was "...is accepted save for the fact that I was unable to give a considered response with a request for historical information. However it can be stated that the transaction was a client who had monies on account with a solicitor and wanted to purchase a property, and decided to instruct my firm and asked her previous solicitors to transfer the monies to me." Mr Barton asked the Respondent whether she had accessed the file at that stage and she said that she had but she had not checked the accounting records. She had looked at Ms B's ledger but not that of Mr C which she had only done this year as the files were in storage. She should have checked the accounting records. Mr Barton put it to her that she had checked the accounting records and that it said so in her letter to the SRA as further identification evidence on the Mrs K matter was said to be with the accounts. The Respondent said she had checked the files and not the accounts in this case as the accounts information was in old boxes. Mr Barton then asked why she had not checked the computerised accounts and she responded that she had not made the link.

136. In re-examination by Ms Lee, the Respondent said that at the time she and Mr Ahmar Hussain were partners in each other's firms and at the time were working towards merger. The monies from Aamir Zane solicitors which had been shown on Ms B's ledger was therefore like a transfer from a branch office.

137. Insofar as the matter of Ms A's assignment of the lease was concerned her letter of 25 November 2009, referred to in the other firm's letter of 30 November 2009, was missing from the Applicant's exhibit bundle, so it was incomplete. No undertaking had been given just an assurance that the mortgage would be settled. She did not recall whether the SRA had asked for the extent of her or the other firm's retainer. Ms A had given her authority for other persons to give instructions on the matter and indeed where company directors were nominees the beneficial owners could give instructions if authorised to do so.

138. The Respondent said that at the relevant time there had been nothing on the bank transfer to indicate that a cash payment had been made by Mr Altaf. It was only after the transaction had completed that she knew about it. No client had suffered loss and she had put in funds from her own resources to make up the shortfall.

The Evidence of Dr John Bradley

139. In examination in chief, Dr Bradley referred to his psychiatric report on the Respondent that was before the Tribunal. He had examined the Respondent on 11 July 2014 and had concluded that she suffered from post-traumatic stress disorder ("PTSD") and depression primarily as a result of a car-jacking incident that had occurred in December 2008 but also due to a number of other factors in her life. This had resulted in poor concentration and a number of other symptoms, including lack of sleep.

140. In cross-examination by Mr Barton, Dr Bradley was asked whether the Respondent was fit to practise. Dr Bradley said that his primary expertise was in the fitness to practise of doctors, although he did have some experience with solicitors. He confirmed that the Respondent was fit to practise but that her efficiency would have been adversely affected by the effect of the car jacking upon her.

Evidence of Mohammad Altaf

141. Mr Altaf confirmed that the contents of his witness statement were true. He was a businessman and financial adviser who had recently been helping his brother who was an estate agent. Ms Lee asked him as to the identity of Mr "FK" referred to in Respondent's bundle 3. Mr Altaf said that Mr FK was his brother's brother-in-law who had been recruited as an accountant to assist with his business.

142. Mr Altaf alleged that Mr FK had taken money from the business. He said that Mr FK had written several cheques out to Mr Altaf to replace those monies but these cheques had been dishonoured.

143. Mr Altaf said that the Respondent had asked him how he was going to finance the purchase of the property in Leyton and had issued a client care letter. She had also asked him for bank statements which he had provided to her on the day before completion.

144. He had banked two cheques and a further £18,000 in preparation for completion. The bank teller had told him that he could deposit the monies directly and he had given the Respondent a copy of the paying in slip the day before or two days before completion.

145. In cross examination Mr Barton asked the witness why he hadn't signed the authority to Barclays Bank. He replied that he had read and understood it and had no objection to signing it if necessary. He apologised and said that he had not known it was necessary, he had maybe forgotten about it.

146. Mr Altaf said that he recognised the paying in slip with the cash amounts written on it and that he had paid £18,000 in cash into the Respondent's bank account as he had known the sort code and account number, which had been given to him by the

Respondent. He had told her that he had put money into her client account the day before completion. He could not recall whether he had told her that he had paid the £18,000 in cash. The money had been transported to the bank in his pocket and he remembered that the teller had counted the money at the counter.

147. Mr Barton asked the witness to read that part of his witness statement that said "I had not informed Mrs Kiani that I would be depositing cash into her account on that day, as it was between me and my bank I was not depositing the money into her account, I was depositing money into my account and the bank was going to transfer it to Mrs Kiani's account. However, Mrs Kiani asked me about the origin of the funds so I told her it was from my bank at Barclays ..." Mr Barton asked Mr Altaf again when he had told the Respondent of the deposit. He replied that he had faxed the receipts to her that same day.

148. Mr Altaf was asked where he had obtained the letter from Barclays Bank dated 23 September 2010. He replied that Mr FK had obtained it. He had initially thought that it was genuine but no longer did so.

149. Mr Barton also asked the witness why he had not used his available cash resources to pay the completion monies instead of the cheques. He responded that Mr FK had told him that it would take 2 to 3 days to sort the matter out and that his accounts had been emptied by Mr FK.

150. The Tribunal asked Mr Altaf why his evidence today concerning the paying in slip and the cash deposit was different from that contained in his witness statement. He said that he had felt under stress to complete the matter but that what he had said in evidence was correct.

<u>The Evidence of Naveed Anwar</u>

151. Dr Anwar said initially that his statement was 'more or less' true but then added that there was nothing that he wished to alter, correct or amend.

152. He no longer practised as a medical doctor and was now a businessman who owned several businesses and properties.

153. Mr A was a friend and they had discussed setting up a business together. Mr A was selling RFF. They decided to become partners in a new business and keep the loan and give new security to the bank. Ms A was Mr A's daughter and she was on the paperwork of RFF.

154. At the time Mr M was selling his share in another business and Dr Anwar was negotiating with him. Following agreement on the sale of the property, he and Mr A went to see the Respondent and explained the position to her; they asked that the loan in the company name be moved to a new security.

155. However, the loan did not go smoothly due to planning issues but the money had already been transferred to Mr M for his share. The bank did due diligence and were not prepared to lend at that time and then the banking crisis occurred. There were therefore difficulties in releasing the charge. He had been in contact with NatWest all

the time through his business relationship manager. The Respondent was continually chasing him about the matter with phone calls, texts and messages.

156. In cross examination Mr Barton asked the witness whether he was aware of the problem regarding removing the charge. He said that he was and confirmed that he understood that the buyer would need a clear title. He was then asked whether the Respondent had discussed how this could be achieved with him but said that he did not recall as the events were 6 years ago. He was referred to paragraph 10 of his witness statement where he had said that "I also informed Mrs Kiani that the security for the loan of the company was being transferred to another premises and that the bank would release the charge on []..." It was put to him that there was no clear plan to remove the charge after the sale.

157. The witness agreed that there were uncertainties for the buyer and that it was "not ethics". He was asked whether the Respondent had ever written to him about the matter and he responded that she had definitely chased him and said that she was being pressed by the buyer's solicitors. She had done this many times by email and texts but he had not been asked to provide this evidence. The situation was very embarrassing. He had told her about the difficulties with the bank because of the planning issues.

The Evidence of Naseer Ahmed

158. Mr Ahmed confirmed that the contents of his witness statement were true. He was a businessman who had known the Respondent for 30 years and had been a client for the last 10 years. In that time he had made loans to other businessmen with no written agreement and no date specified for return. The Respondent always asked for his identity documents and where any money was coming from at the beginning of each transaction where she had acted for him. Communication was done on a face to face basis as he preferred to talk rather than write letters.

Submissions made on behalf of the Respondent

159. Ms Lee said that she complained of both the complexity of the Rule 5 statement and the cross-examination of the Respondent by Mr Barton. She referred to the case of Thaker v Solicitors Regulation Authority [2011] EWHC 660 (Admin), which was an appeal from the Tribunal. In that case ground two of the appeal, summarised in paragraph 29, was that at the original hearing the Applicant:

> "...sought to pursue allegations which went well beyond the twelve relevant transactions. Mr Lamacraft, counsel for Mr Thaker, objected to this part of the opening...."

The Administrative Court allowed that ground of appeal, which included cross examination on matters outside the range of the twelve transactions, both of which offended against the Mr Thacker's Article 6 rights as was made clear in the Judgment. Having ordered a rehearing before the Tribunal, Jackson Ll concluded in paragraphs 64 and 65:

> "[64] In order to have an effective re-trial, the SRA must serve a properly drafted r 4 statement in respect of any of the twelve allegations which it wishes to pursue. For the avoidance of doubt a properly drafted r 4 statement will set out a summary of the facts relied upon. It would be helpful if those facts are set out concisely and in chronological order. The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or a r 4 statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies.
>
> [65] If the r 4 statement alleges that Mr Thaker knew or ought to have known certain matters, the facts giving rise to that actual or constructive knowledge should also be set out. Once the r 4 statement has set out the primary facts asserted, it should then set out the allegations which are made on the basis of those primary facts. The person who drafts the r 4 statement should heed the guidance given by this court in Constantinides in relation to pleading dishonesty. Ina complex case such as this the Solicitors' Disciplinary Tribunal needs to have a coherent and intelligible r 4 statement, in order to do justice between the parties."

160. In so far as any allegation of lack of integrity was concerned the actions which supported the allegations were unspecified in the Rule 5 statement. In particular, Ms Lee referred to paragraphs 67, 69, 70 and 74 as being statements which made no specific reference to actions supporting allegation 1.5. Further, if the Tribunal rejected her submissions on the Rule 5 statement then in her submission the Tribunal could only consider evidence based upon the actual transactions. Where cross-examination strayed outside the scope of those transactions then that should not be considered; there had been a suggestion that the Respondent's conduct during the investigation was part of the evidence of lack of integrity. In making that suggestion Mr Barton had strayed beyond that section of the Rule 5. In Ms Lee's submission anything not specifically pleaded should not be considered under allegation 1.5.

161. Where the assignment of Ms A's lease was concerned the Tribunal had heard evidence about documentation passing between the other firm of solicitors and the Respondent. However, if the transaction was examined closely it was not a classic conveyancing transaction. In the transfer of the lease neither the Respondent's Firm nor the other firm of solicitors had total control of the transaction. The Tribunal had not seen the other firm's retainer, indeed the Applicant had not examined either party's obligations under their retainers and there was no suggestion that it was wrong not to have control of all parts of the transaction. A number of file notes were missing and the Tribunal did not have the complete picture and was unable to judge which documents were missing. In fact it was for the purchaser to control the transaction but no undertaking had been given in this case; neither was there any suggestion of an implied undertaking. The point was whether the Respondent had misled the other firm. Given her explanation, the Applicant had not made the case.

162. The Tribunal had heard the Respondent's evidence concerning Mr Anwar and it was clear that she believed that Mr Anwar was the beneficial owner of the business and should be involved in the transaction. His evidence however had not been clear and he had at times contradicted his own witness statement.

163. It was regrettable that Mr Khan had been unable to attend to give evidence. The letter dated 31st July 2009 had been sent in error and the Tribunal had seen that it had been corrected by email the same day. It was a mistake and did not demonstrate a lack of integrity. Whilst it was correct to say that authority for the transfers was neither given nor recorded in writing the clients did agree to the transfers; this in itself could not be elevated to a lack of integrity, it was covered in the Respondent's admission of allegation 1.2. The question was whether the Respondent should have made the transfers before the loan was discharged and that was an error of judgement but did not demonstrate a lack of integrity. There was no loss to any client and no complaint from any client and there was no allegation of dishonesty.

164. It was accepted that a solicitor could be struck off for lapses less serious than dishonesty (Bolton v The Law Society [1994] 2 All ER 486). In the case of SRA v Scott, the Tribunal had used the guidance on integrity in Hoodless and Blackwell v SRA [2003] FSMT 007:

> "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."

However, the guidance had gone on to say that this presupposed that ordinary standards were clear, if they were not then there could be no lack of integrity.

165. In SRA v Scott the Tribunal looked to the test in Hoodless and Blackwell. In Scott the first objective limb of the dishonesty test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL had been met but the second subjective limb had not. In Ms Lee's submission the Hoodless test should be used to establish a lack of integrity where no dishonesty was found. The Tribunal should look at the circumstances a reasonable person found themselves in and not look at their decision in a vacuum.

166. There was no guidance in the Code of Conduct 2007 on what was meant by "integrity" and although the rules may have changed in the intervening period the Financial Conduct Authority's published guidance and non-exhaustive list in the "Statements of Principle and Code of Practice for Approved Persons" before the Tribunal was a useful guide.

167. In Ms Lee's submission the Respondent had demonstrated genuine insight, which had not been the case in Hoodless and Blackwell. The Tribunal had to ask itself whether the Respondent's actions with those of someone who lacked moral standards. The evidence did not support that the Respondent had been reckless as was the case in Scott. The Respondent accepted that she had made mistakes and she had taken immediate steps to rectify those mistakes; the Tribunal had had a detailed explanation of changes she had made. She had practised without incident since these events.

168. In regard to allegation 1.6, Ms Lee said that the Rule 5 statement was not clear. The Respondent had been taken through the money laundering particulars line by line and the Tribunal had heard the answers she had given. However the Particulars did not link the breaches to the allegations. It was accepted that the relevant person, as the Respondent was, must have proper procedures but it was not an absolute that records

had to be made or detailed questions asked. The Respondent had given evidence that she had regularly made appropriate enquiries and that the clients were well-known to her but she had not recorded those enquiries to the SRA's satisfaction.

169. At the time she was asked questions about the facts underlying allegation 1.7 by the Officer she did not have satisfactory answers but she looked into the matter and discovered a series of accountancy errors. If the Tribunal accepted her evidence on this point then this allegation would fall away.

170. The essence of allegation 1.8 was that the lender client had not been told that monies had come in from a third party on a particular transaction. On Mrs K's file that was incorrect, there was no lender involved. On Ms B's matter the Tribunal had heard evidence from the Respondent that the monies that had come in were not a loan or a gift but were repayment of a debt. It followed that the monies belonged to Ms B and there was no need to notify the lender.

171. Ms Lee said that the Respondent had been permitted to continue in practice by the SRA with no conditions on her Practising Certificate and had made strenuous efforts to improve her procedures.

The Applicant's Response on Points of Law

172. In Mr Barton's submission Thaker v the Solicitors Regulation Authority was a great deal more complex than this case. The Respondent in that case complained that he did not understand the allegations and made various applications for better particulars and disclosure, including an application for an adjournment on the first day of the trial, which was refused. There were also judicial review proceedings on a previous application to adjourn running side by side. The Administrative Court remitted some of it back to the Tribunal for a rehearing. In contrast here, not once had the Respondent asked for clarification of anything despite a number of interlocutory hearings. She had not said a word about not understanding the case she had to meet and this had all been raised for the first time in her representative's closing remarks. If the Rule 5 was not clear then Mr Barton could have been asked about it before today, he was asked to particularise the money laundering allegation and had done so. This was all in procedural contrast with the Thaker case.

173. Even if the Rule 5 was in some way defective, Ms Lee had heard his opening submissions and said nothing, so no doubt the Respondent knew the case she had to meet. It was correct to say that the Thaker case indicated that the Rule 5 statement should clearly set out the facts. The Tribunal Rules required that documents should support the allegations and that the case to be met had to be set out in the Rule 5 but in this case the Respondent's credibility was in issue. Mr Barton's cross-examination had gone to credit of the witness and it was correct to say that that should be confined to the case made in the Rule 5 statement.

174. Mr Barton added that this case had never been put on the basis of a breach of undertaking.

175. The Constantinides case provided guidance where the judgment of another court was relied upon and there was no relevance here. Whilst the Scott case had been mentioned, dishonesty was not found and the simple test in Hoodless was adopted in Scott; however, Scott could not be viewed as a precedent. Allegation 1.6 was simply put on the basis that a lack of integrity equated to a failure to come clean and in Mr Barton's submission that was clear.

Findings of Fact and Law

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

177. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

178. The Tribunal had attended carefully to Ms Lee's submissions concerning both the complexity of the Rule 5 statement and the extent of Mr Barton's cross-examination of the Respondent and it had also given close attention to Mr Barton's response to those points.

179. In the Tribunal's view, whilst the Rule 5 statement was very detailed it was clear from it what allegations the Respondent had to face and the facts that underlay those allegations. The Tribunal had had no difficulty in restricting itself to those salient points in respect of each allegation. It found the Rule 5 statement to be both "coherent and intelligible" (Thaker).

180. The Tribunal found that Mr Barton had not sought to pursue allegations which were not on the face of the Rule 5 statement and where his cross-examination had strayed beyond the matters complained of, the Tribunal had been able to restrict itself to the matters in hand.

181. The allegations against the Respondent, Rukhsana Jabeen Kiani, were that: -

182. **Allegation 1.1 - In breach of Rule 7 of the Solicitors Accounts Rules 1998 she failed to remedy breaches thereof promptly on discovery.**

182.1 The Respondent admitted this allegation and the Tribunal found it to have been proved beyond reasonable doubt on the facts and documents before it.

183. **Allegation 1.2 - In breach of Rule 22(l)(e) of the said Accounts Rules client money was withdrawn from client account when instructions to do so were neither given nor confirmed in writing.**

183.1 The Respondent admitted this allegation and the Tribunal found it to have been proved beyond reasonable doubt on the facts and documents before it.

184. **Allegation 1.3 - In breach of Rule 22 (5) of the said Accounts Rules she withdrew money in relation to a particular client which exceeded the money held on behalf of that client thereby creating a shortage on client account.**

184.1 The Respondent admitted this allegation and the Tribunal found it to have been proved beyond reasonable doubt on the facts and documents before it.

185. **Allegation 1.4 - ln breach of Rule 32 of the said Accounts Rules:**

1.4.1 she failed to keep accounting records properly written up at all times to show her dealings with client money received held or paid;
1.4.2 she failed to record all dealings with client money in a client ledger;
1.4.3 the current balance on each client ledger was not always shown or readily ascertainable.

185.1 The Respondent admitted this allegation and the Tribunal found it to have been proved beyond reasonable doubt in its entirety on the facts and documents before it.

186. **Allegation 1.5 - She failed to act with integrity contrary to Rule 1.02 of the said Code of Conduct 2007.**

186.1 This allegation was denied by the Respondent.

Transaction One

186.2 This part of the allegation related to the Respondent's correspondence with the other firm of solicitors in relation to the redemption of a charge.

186.3 The Tribunal had looked carefully at the telephone note dated 26 August 2009 that the Respondent had made concerning this matter and which she had also produced as part of her evidence. The note was her own document and she knew she had the obligation to redeem the loan with NatWest bank. She did not do so. The letters written by the Firm to the other firm of solicitors continued over a substantial period of time and continued to assert that the Firm was pressing the bank for the DSI.

186.4 In her oral evidence before the Tribunal the Respondent had accepted that at no time following completion had there been any contact between her and the bank. She also said that she was alluding to the clients pressing the bank in her letters but the Tribunal did not accept that the letters could be read in that manner. The Tribunal found that the Respondent had continued to give the other firm the impression that she was awaiting the DSI discharge, when [redacted] she had already paid the monies necessary for the redemption away and there was no current prospect of obtaining the DSI from the bank.

186.5 [Redacted] This showed a lack of integrity on any test and certainly met the test in Hoodless and Blackwell v FSA referred to by the Applicant. [Redacted].

186.6 This part of allegation 1.5 was therefore found to have been proved beyond reasonable doubt.

Transaction Two

186.7 In the matter of Mr Khan's two properties and the charge upon them, the Respondent's Firm had given an undertaking to the bank that the charge would be redeemed. The Tribunal noted her observation in a letter to the SRA dated 7 February 2012 that "The semantics of the client's collateralisation of his loan is a matter for him and his lender." This however missed the point; the bank had a charge and it had to be released.

186.8 The Tribunal found that the Respondent had[redacted]paid monies away to Mr and Mrs A so that the charge could not be redeemed on completion. The Respondent could not say that no harm had been caused, the buyer of the properties continued to have the houses charged with another person's debt and consequently the debt incurred by the buyer to acquire it could not be secured. It was not any exculpation to state that the seller's mortgage debt had been serviced adequately subsequent to the sale to the buyer.

186.9 The Tribunal was of the view that an undertaking of this nature should be complied with promptly. [Redacted] paying away the funds necessary to meet the bank's requirements lacked integrity. [Redacted]

186.10 The Tribunal found this part of allegation 1.5 to have been proved beyond reasonable doubt.

187. **Allegation 1.6 - She failed to have sufficient regard for her duties under the Money Laundering Regulations 2007 and/or the Law Society's Blue Card Warning on money-laundering and thereby breached Rule 1.06 of the said Code of Conduct 2007.**

187.1 This allegation was denied by the Respondent.

Matter One

187.2 The Tribunal had paid careful attention to the evidence of both the Respondent and Mr Altaf. The Respondent had told the Tribunal that she had first known that Mr Altaf had paid cash into the Firm' s client account after completion.

187.3 In her witness statement the Respondent had said that Mr Altaf had told her after completion that money had been withdrawn from his account and then paid in cash to the Firm's client account in the bank. Mr Altars amended statement asserted that Mr Altaf had deposited money into his account and then asked the bank to transfer those monies to the Firm's account. Given the existence of the paying in slip, which clearly showed a cash payment had been made into the Firm's client account, neither was a credible explanation.

187.4 Mr Altaf had recalled the transaction at the bank quite clearly and had told the Tribunal that he had faxed the Respondent the receipt before completion. The Tribunal found Mr Altaf s evidence compelling in this regard. It noted that the Respondent had made no record on file of any money laundering checks and there was no evidence of any questions that had been asked of Mr Altaf concerning the cash

payment. The Tribunal found this part of allegation 1.6 to have been proved beyond reasonable doubt.

Matter Two

187.5 In the matter of Mrs K, the Tribunal had heard the Respondent's evidence as to the identity of Mr Patel, which was that he was the same person as Mr K. The Tribunal had heard that the Ks were a close-knit family group who were carrying out the transaction as a family. The key document, an attendance note, was headed "Patel" which was a nickname for the client, and in the body of the note the name was corrected to his actual name.

187.6 If it was the case that Mr K and Mr Patel were one and the same person then he was a client who could have authorised the distribution of funds to the different parties. There was evidence before the Tribunal that the Respondent had carried out some identification checks upon him. In all the circumstances the Tribunal could not be certain to the criminal standard that this part of the allegation was made out.

Matter Three

187.7 In her evidence the Respondent had said that Mr FS was the business partner of Ms B who owed her monies for the sale of her share of the business. There was no information on file or witness evidence before the Tribunal to confirm this assertion, nor anything else to show that due diligence had been carried out by the Respondent neither had the Officer been informed of the link when she had asked the Respondent at the time of the inspection.

187.8 It was a solicitor's duty to carry out due diligence on the receipt of such a large sum and the Respondent bad singularly failed to do so. The Tribunal found that this part of allegation 1.6 proved beyond reasonable doubt.

188. **Allegation 1.7 - She 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 said Code of Conduct 2007 and/or note (ix) to Rule 15 of the said Accounts Rules.**

188.1 This allegation was denied by the Respondent.

188.2 The Tribunal rejected the Respondent's assertion that the monies from Aamir Zane on Ms B's matter were in any way similar to monies coming in from a branch office of the Firm; these were two separate firms.

188.3 The Tribunal had heard the Respondent's explanations both for the original receipt of the monies and for the movements on Ms B's ledger following that receipt. She had said that these monies, unrelated to any work that she was doing, should have been posted to another client's ledger and had gone on to explain the rationale for the payments out of the account. On the Respondent's own description, there could be no clearer example of a solicitor using client account as a banking facility, unrelated to any legal transaction.

188.4 The Tribunal found this allegation to have been proved beyond reasonable doubt.

189. **Allegation 1.8 - She failed to act in the best interests of clients contrary to Rule 1.04 of the said Code.**

189.1 This allegation was denied by the Respondent.

Purchase One

189.2 The Tribunal had heard the Respondent's explanation as to the monies that had come in to Ms B's ledger from Mr FS and that these monies rightly belonged to Ms B. There was no complaint from the lender client nor from Mr FS before the Tribunal. The Tribunal did not find this part of the allegation proved to the criminal standard.

Purchase Two

189.3 There was no lender client in this case. The sole clients were the K family and the Tribunal had heard that Mr K and Mr Patel were synonymous. None of the clients had made any complaint. The Tribunal did not find this part of the allegation proved to the criminal standard.

Previous Disciplinary Matters

190. Matter number 10453-2010. The allegations against this Respondent and Mr Ahmar Hussain were that that they had failed to act in the best interests of their clients, behaved in a way that was likely to diminish the trust the public places in them and the legal profession, misled clients and/or the SRA as to their partnership, failed to supervise adequately or at all the activities of members of staff and acted recklessly. The allegations were each admitted by the Respondent.

191. The division of the Tribunal sitting on that occasion decided that:

> "...she had played a minor part in the proceedings in that she had allowed herself to be held out as a partner, whilst unsuccessfully seeking to limit her regulatory and other liabilities by way of an agreement with the First Respondent.
>
> The Tribunal considered that her actions had been stupid and had placed her in a position in which she had no choice but to admit offences."

192. The penalty imposed upon the Respondent was a fine of £10,000 and costs.

Mitigation

193. Ms Lee said that the Respondent had practised from the same address since June 1999 and was well-known and respected in the community. Many of her clients had been with her for a number of years. The matters complained of arose when the symptoms after the car-jacking had impacted upon her practice; there were also other problems such as the economic downturn and the health of parents. She realised that there were

problems and had taken steps to invest and modernise the practice. The Tribunal had heard that she was working towards Lexcel accreditation.

194. It was two years since the Report had been filed and no restrictions had been imposed upon her. There was no evidence before the Tribunal and no suggestion that the public had been harmed or that there had been any complaints. These were historical mistakes. The Tribunal could see from the broad range of references submitted on the Respondent's behalf that they spoke of her integrity and charitable work.

195. The Respondent had a good professional indemnity insurance record and she had now moved away from conveyancing. It was acknowledged that she had made a poor decision to enter partnership with Mr Ahmar Hussain and she had been tainted by her association with him, as could be seen from the previous Findings of the Tribunal. The facts underlying those previous Findings were around the date of the car-jacking. No medical evidence had been adduced at that time, but given the evidence now before this Tribunal of her symptoms at the time, these would go some way to explaining what had then gone wrong.

196. If the Tribunal was minded to impose a sanction of suspension or striking off of the Respondent then the impact upon her would be obvious. If she had to leave the profession then she would like to leave with dignity and respect and Ms Lee requested in those circumstances that the Tribunal delay filing the Order with the Law Society for a period of three months.

197. Ms Lee concluded by saying that the Respondent had true insight and genuine remorse. Since she had practised without damage to the public the Tribunal was urged to consider a sanction less than suspension by imposing conditions upon her practising certificate or giving her time to close her practice. The Tribunal was asked to take note of the impact of the car-jacking incident and the consequent symptoms for which she had sought treatment. The Respondent was deeply sorry that she had allowed these circumstances to arise and that she had affected the reputation of the profession. In all the circumstances the Tribunal might consider a fine to be the more appropriate sanction.

Sanction

198. The Tribunal referred to its Guidance Note on Sanctions when considering the appropriate and proportionate sanction.

199. The Tribunal had found a very serious set of allegations proved beyond reasonable doubt, with the exception of allegation 1.8. In particular it had found that the Respondent had failed to act with integrity in two different matters. The failure to discharge the mortgage on the assignment of Ms A's lease had gone on from 27 August 2009 until 9 February 2011, a period of over 18 months, [redacted]. In the sales of property by Mr Khan there had been [redacted] delay in discharging an undertaking given to another firm of solicitors, caused by the fact that the Respondent had lent the seller's mortgage redemption monies to her clients Mr and Mrs A.

200. The Tribunal noted that in matter number 10453-2010 the Respondent had admitted recklessness on 21 October 2010. Her admission was at the time of the events that had led to the allegation of lack of integrity in relation to Ms A's matter. The Tribunal would have hoped that following the salutary experience of appearing before it and being fined a substantial sum of money the Respondent would have been meticulous in her dealings but this had not proved to be the case.

201. The Tribunal had taken careful note of the medical evidence produced by the Respondent and in particular the evidence of Dr Bradley. It had heard from Dr Bradley of the Respondent's difficulties but also that she was fit to practise. The Tribunal had paid careful attention to paragraph 45 of the Guidance Note on Sanctions:

> "Particular matters of personal mitigation that may be relevant and may serve to reduce the nature of the sanction, and/or its severity include:
>
> that the misconduct arose at a time when the Respondent was affected by a physical or mental illness that affected his ability to conduct himself to the standards of the reasonable solicitor. Such mitigation should be supported by medical evidence from a suitably qualified practitioner."
>
> (Emphasis added)

202. The Tribunal had also considered the range of good references provided for the Respondent.

203. In Bolton it was said by Sir Thomas Bingham MR that:

> "It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren ... Often he will say, convincingly, that he has learned his lesson and will not offend again ...All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."

204. [Redacted]

205. [Redacted]

Costs

206. The Applicant asked for costs in the sum of £43,970.36.

207. Ms Lee pointed out that since the original Forensic Investigation Officer was on long term sick leave there was duplication of work and a level of recapitulation which would have not been necessary had she been able to attend the hearing. The Respondent had agreed the Officer's evidence some weeks ago and Mr Barton had been asked not to call the witness but had still done so.

208. In addition, allegation 1.8 was not proved and that should be taken into account. in deciding costs.

209. In response Mr Barton said that Mr Wallbank's attendance was not in the costing at all; the costing was restricted to the Officer's time before she went on sick leave. There had been one conference with Mr Wallbank which the Officer would have needed to attend in any event.

The Tribunal's Decision in Relation to Costs

210. The Tribunal had listened carefully to the submissions made on costs by both parties and examined in detail the Applicant's statement of costs and the Respondent's personal financial statement.

211. The Tribunal found that allegation 1.8, whilst not proved, had been properly brought.

212. The Tribunal found that the fair and appropriate order on summary assessment was that the Respondent should pay the Applicant's costs in full.

213. The Tribunal had ••••••••
[redacted] concluded that there was no reason that the costs of these proceedings should fall on the rest of the profession, since it appeared that the Respondent had sufficient equity in property to pay the Applicant's costs. The Tribunal would therefore make an immediate order for costs in the sum of £43,970.36.

Statement of Full Order

214. The Tribunal Ordered that the Respondent, Rukhsana Jabeen Kiani, solicitor, [redacted] pay the costs of and incidental to this application and enquiry fixed in the sum of £43,970.36.

Dated this 15th day of October 2014
On behalf of the Tribunal

A. G. Gibson
Chairman