SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11269-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHRISTOPHER JAMES ANDERSON Respondent

Before:

Ms A.E. Banks (in the chair)
Mrs J. Martineau
Mrs L. McMahon-Hathway

Date of Hearing: 14 & 15 January 2016

Appearances

Mr Rupert Allen, counsel, of Fountain Court Chambers, Temple, London EC4Y 9DH, instructed by Ms Katrina Wingfield, solicitor, of Penningtons Manches LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant.

The Respondent, Mr Christopher James Anderson, appeared and represented himself.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Mr Christopher James Anderson, alone in a Rule 5 Statement dated 7 August 2014 were that:

1.1 He failed to make full and/or accurate disclosure of his assets in a Proposal to Creditors for an Individual Voluntary Arrangement ("IVA"), in breach of Principles 2 and 6 of the SRA Principles 2011 ("the Principles")

1.2 He attempted to take unfair advantage of third parties, namely his creditors, by failing to provide them with all material necessary to enable them to make an informed decision regarding his IVA Proposal, in breach of Principles 2 and 6 of the Principles. It was further alleged that he thereby failed to achieve Outcome 11.1 of the Solicitors Code of Conduct 2011 ("the 2011 Code").

1.3 It was alleged that the Respondent's conduct in respect of allegation 1.1. was dishonest, although it was not necessary for the Tribunal to make a finding of dishonesty in order for allegation 1.1 itself to be proven.

2. The further allegations made against the Respondent in a Rule 7 Statement dated 27 October 2015 were that:

2.1 He withdrew money from a residual client balance in respect of time costs and expenses that he claimed to have incurred while investigating the ownership of that residual balance, when he had no authority from either the relevant client or the SRA for doing so. The withdrawals were therefore made in breach of Rule 17.2 and Rule 20 of the SRA Accounts Rules 2011 ("AR 2011"), and he acted without integrity in breach of Principle 2 of the Principles and in a way that undermined public trust in the legal profession in breach of Principle 6.

2.2 After 12 December 2014 he held himself out to third parties to be authorised to act as a solicitor, at a time when he knew that he had no valid practising certificate or alternatively was reckless as to that fact. In doing so, he acted without integrity in breach of Principle 2 and in a way that undermined public trust in the legal profession in breach of Principle 6.

2.3 He failed to co-operate with the SRA in connection with its investigation into his conduct by failing to respond substantively or at all to letters dated 8 December 2014 and 24 July 2015. He thereby failed to comply with his legal and regulatory obligations and failed to deal with his regulator in an open, timely and co-operative manner, in breach of Principle 7. He also failed to co-operate fully with the SRA at all times, thereby failing to achieve Outcome 10.6 of the 2011 Code.

2.4 It was alleged that the Respondent's conduct in respect of allegation 2.1 was dishonest, although proof of dishonesty was not an essential ingredient for proof of allegation 2.1.

Documents

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

Applicant: -

- Application dated 7 August 2014
- Rule 5 Statement, with exhibit "KEW1", dated 7 August 2014
- Rule 7 Statement, with exhibit "KEW2", dated 27 October 2015
- Hearing bundle 1, including witness statement of Mr Dean Johnson dated 17 September 2015 and Memoranda of Case Management Hearings ("CMHs") in this case
- Letter Penningtons Manches LLP to Tribunal dated 23 December 2015
- Statement of costs dated 4 January 2016
- Skeleton argument dated 6 January 2016
- Bundle of authorities

Respondent: -

- Respondent's Answer to Rule 5 Statement filed on 31 March 2015
- Respondent's witness statement in relation to the Rule 5 Statement, with exhibits, dated 17 December 2015
- Witness statement of Mr Peter Coe, dated 12 December 2015
- Witness statement of Mrs Irene Anderson, dated 23 December 2015
- Respondent's Answer to Rule 7 Statement, dated 17 December 2015
- Bundle of documents for the hearing, including the Reply to the Rule 7 Statement, with exhibits
- Disclosure bundle in Croydon County Court matter case number 2CRO1665
- Respondent's second and third witness statements, dated 31 March 2015, with exhibits
- Extract from SRA Handbook Glossary 2014
- Extract from The Law Society's Information Sharing Handbook
- Copy Article 6 European Convention on Human Rights
- Respondent's skeleton argument relating to Rule 5 allegations, dated 7 January 2016, with exhibits
- Respondent's skeleton argument relating to Rule 7 allegations, dated 7 January 2016, with exhibits
- Respondent's schedule of costs dated…
- Respondent's Note to the Tribunal with submissions on unfairness, dated 13 January 2016.

Preliminary Matter (1) – Respondent's Application to Stay the Proceedings for Unfairness

4. On the morning of Thursday 14 January 2016, shortly before the hearing was due to begin, the Respondent submitted an application headed, "Respondent's Note to Tribunal – Unfair Trial" which was dated 13 January 2016. The application itself was 8 pages long, and approximately 30 pages of exhibits were appended to the application. A copy was provided to the Applicant before the hearing began.

5. On commencing the hearing, shortly after 10am on 14 January, the Tribunal noted that it was not acceptable for an application to be made at such short notice, particularly where there had been no prior indication of such an application. The Respondent indicated that he could make his submissions in relation to the application in about 20/30 minutes. The Applicant told the Tribunal that although he had been unaware of the application until a short time before the hearing, he could deal with the merits of the application. The Tribunal therefore agreed to hear the application.

6. The Tribunal informed the parties, before the application was heard, of the following points, to ensure that there was no concern about the Tribunal's fairness in considering the application. The Tribunal informed that parties that a new Tribunal member was "shadowing" the Tribunal, but would play no part in the decision-making, and that the Tribunal's new Head of Case Management was shadowing the Clerk, for training purposes. The Tribunal further informed the parties that the Clerk had dealt with related matters involving the Respondent, but those matters had not been discussed and would not be discussed in relation to the present case.

Respondent's Submissions

7. The Respondent referred to his written submissions, and in addition outlined to the Tribunal the history of the Firm (Andersons Solicitors).

8. The Respondent told the Tribunal that he started the Firm in 1968, about a year after he was admitted as a solicitor. The Firm had closed on 29 December 2013 as a result of the Firm being unable to secure affordable Professional Indemnity Insurance ("PII"). The Firm had previously been insured by Balva, who had agreed to guarantee the premium at the same level for two years; that figure was around £45,000. However, Balva collapsed and could not offer insurance for the year 2013/14. The Firm obtained quotations for insurance at the level of around £142,000; this three-fold increase in the premium was not affordable.

9. The Respondent told the Tribunal that previous proceedings before the Tribunal in 2013 had led to this increase in premium. The Respondent told the Tribunal that in those proceedings, the Chair had stated at the end of a five-day hearing, that the case should not have come to the Tribunal. The Respondent (and others) had each been fined £1,000 as a result of those proceedings. In addition, the SRA had made a costs claim of £142,000, of which the Tribunal ordered the Respondent and others to pay a total of £80,000. The Respondent submitted that those matters had led to his bankruptcy on 9 March 2015.

10. The Respondent told the Tribunal that when the Firm closed on 29 December 2013 it was incumbent on him (and others) to place the live files with other firms. The Firm had not been able to take any new instructions from late October 2013. In this situation, clients had "fled" the Firm. The Respondent told the Tribunal that one of the Firm's salaried partners, Mr Paul Richardson, had taken about 120 live client files to his new employer's firm. The Respondent told the Tribunal that he valued the work on those files at £60,000-£100,000, but nothing at all had been paid to the Respondent/the Firm in respect of that work. This also contributed to the Respondent's bankruptcy. The Respondent told the Tribunal that it was up to the

Trustee in Bankruptcy to decide when and whether to pursue recovery of any fees earnt on those files.

11. With regard to the matters in the Rule 5 Statement, which related to the closure of the Firm and residual balances, it had taken a long time to clear the balances; the balances had accrued over the 45-year history of the Firm, which had included some small acquisitions of smaller firms over the years.

12. The Respondent told the Tribunal that the Rule 7 Statement had been made more than 12 months after the Rule 5 Statement. The Respondent acknowledged that the Tribunal had permitted the issue of that Statement, but submitted that there was no note on the face of the order to make clear that the Rule 7 Statement was more than 12 months after the Rule 5 Statement, and that this was a requirement of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules").

13. The Respondent then began his substantive submissions in relation to his application.

14. The Respondent referred to s.285 Insolvency Act 1986, which in provisions relating to restrictions on proceedings and remedies, stated,

> "2.1 At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the court may stay any action, execution or *other legal process* against the property or person of the debtor or as the case may be of the bankrupt.
>
> 2.2 After the making of the bankrupt order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall:
>
> a) have any remedy against the property or person of the bankrupt in respect of that debt; or
>
> b) before the discharge of the bankrupt commence any action or other legal proceedings except with the leave of the court and on such terms as the court may impose;
>
> c) Note 286(6) References in this section to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate."

(Emphasis added. Quotation taken from the Respondent's written submission and not checked against the text of the Act)

15. The Respondent told the Tribunal that he was bankrupt; the order had not yet been discharged. The Respondent submitted that the relevance of the provisions noted above was that his bankruptcy affected his ability to obtain legal representation. The Respondent acknowledged that the provision at paragraph 2.2 (c) of paragraph 14 related to any order which may be made, rather than the inherent fairness or otherwise of the trial.

16. The Respondent submitted that the witness evidence of Mr Dean Johnson, set out in a witness statement dated 17 December 2015 was in the nature of expert evidence. The Respondent referred to Civil Procedure Rules ("CPR") 35.4 on the Court's power to restrict expert evidence, where it was stated,

> "No party may call an expert or put in evidence in an expert's report without the court's permission".

(Quotation from the Respondent's written submission and not checked against the text of the CPR.)

17. The Respondent submitted that Mr Johnson was a solicitor employee of the Applicant who was giving expert evidence and no permission had been given by the Tribunal for the use of expert evidence, despite the Applicant being aware of an intention to produce his evidence. The Respondent's submission was to the effect that the inclusion of Mr Johnson's evidence was unfair.

18. The Respondent's primary submissions related to Human Rights Act considerations, and in particular the rights granted under Article 6 of the European Convention on Human Rights ("ECHR").

19. The Respondent referred to a Tribunal document dated 20 February 2014 entitled "Comments on the Legal Services Board's Draft Paper on "Sanctions and Appeals"", in which it was stated at paragraph 5,

> "The SDT has unlimited fining powers (introduced in the Legal Services Act 2007) which it can only exercise after a Human Rights Act-compliant hearing in public at which both parties *have the opportunity to be legally represented* and to give evidence and call witnesses, followed by a decision announced in public…"

(Emphasis added).

20. The Respondent referred to a definition of the word "opportunity), stated to be taken from an Oxford Dictionary; the dictionary e.g. Compact, Shorter, etc. and edition were not stated. The definition relied on by the Respondent of "opportunity" was:

> "A time or set of circumstances that makes it possible to do something."

21. The Respondent submitted that because of his bankruptcy, he could not afford legal representation and Legal Aid was not available. The Respondent submitted that he therefore did not have the opportunity to be legally represented.

22. The Respondent referred to Article 6 of the ECHR, which provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic

society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require…"

The Respondent referred in particular to Article 6(3)(c) with regard to the provision of legal assistance.

23. The Tribunal noted that whilst Article 6(1) relates to all sorts of proceedings, Article 6(3) refers to criminal proceedings. The Respondent referred to an Information Sharing Handbook, published by the Law Society, in which it was stated that Article 6(3) applied, by analogy, where the consequences of civil proceedings were sufficiently serious. The Respondent further referred to the case of Albert and Le Compte v Belgium (1983 5EHRR 533), which was a case involving disciplinary proceedings against doctors. The Respondent submitted that given the potentially serious consequences of these proceedings in the Tribunal, he should have the right to defend himself through legal assistance of his own choosing, or to be given free representation.

24. The Tribunal asked the Respondent to comment, if he wished, on the situation in criminal proceedings in England and Wales in which those prosecuted may either obtain Legal Aid or pay for representation, where they do not quality for Legal Aid. Free representation was available to anyone through the Duty Solicitor scheme, but a Duty Solicitor was not able to represent an accused person at a contested trial. Thus, free representation at trial, even in a criminal matter, may not be available. The Respondent noted that he was surprised that this was the position and as he was unrepresented he was not able to comment on this point.

25. The Respondent submitted that there was a significant inequality of arms in this case, which rendered the case unfair. Whilst he was unrepresented, the Applicant had numerous employees, including in its enforcement department, and had engaged Penningtons Manches LLP, a firm with 115 partners and 600 other staff, together with

experienced counsel. The Respondent had been criticised for his late application, but at noon the previous day he had received a bundle of authorities on behalf of the Applicant. The Respondent told the Tribunal that he had had no opportunity to consider those authorities and, of course, could not take legal advice as he could not afford to do so.

26. The Respondent submitted that there had been a failure to disclose relevant documents by the Applicant. He referred in particular to paragraph 20 of the Rule 7 Statement, which read:

> "It appears from the ledger entries above, *and further documents which the SRA has obtained*, that these withdrawals related to the time costs and expenses or disbursements that the Respondent claimed to have incurred in carrying out his enquiries into the ownership of the [A] funds."
> (Emphasis added).

27. The Respondent submitted that the Applicant had not disclosed evidence, to which he was entitled, in order to conduct his defence properly; the Respondent submitted that the Applicant was in breach of Article 6(1) ECHR. The Respondent did not know what the "further documents" referred to at paragraph 20 of the Rule 7 Statement might be and submitted that the Applicant should have produced any documents to which it referred.

28. The Respondent referred to an application to amend the Rule 7 Statement, which had been intimated by the Applicant. The Respondent's submissions on this point will be set out below in relation to that application. In short, the Respondent submitted that it was unfair that the Applicant should be permitted to amend an allegation at this stage, having taken a "scattergun" approach to the allegations.

29. The Respondent referred to the Tribunal's decision in the case of Heer Manak (11165/2013), as reported in the Law Society Gazette of 28 September 2015. The report of that case noted that the Tribunal had stated,

> "…to conduct a fair trial it was particularly important in such cases to be crystal clear about the scope of the allegations…"

and

> "…This had been aggravated by attempts to clarify, expand or modify the allegations."

The Chair of this division informed the parties that she was a member of the division which had heard the Heer Manak case.

30. The Respondent submitted that in this case, as in the Heer Manak case, the Applicant was seeking to clarify, expand and modify the allegations "to avoid confusion". The Respondent submitted that the proposed amendment to the Rule 7 Statement would add a new allegation, less than 30 days before the substantive hearing, in breach of Rule 7(2) of the Rules. The Respondent opposed the proposed amendment to the Rule 7 Statement.

31. In response to a question from the Tribunal, the Respondent told the Tribunal that he could not say whether or not anything in his Answer to the allegations in the Rule 7 Statement would have been different if the allegation had been put in the way now proposed by the Applicant.

32. The Tribunal noted that, at this stage, the Applicant had not made an application to amend the Rule 7 Statement. It further noted that the Respondent's written submissions contained a section in which it was submitted that these proceedings were a "revenge" application because the Respondent had issued Tribunal proceedings (which had been certified as showing a case to answer but were subsequently struck out) against Penningtons Manches LLP. The Respondent did not expand on that submission in the hearing.

Applicant's Submissions

33. The Applicant submitted that the current proceedings were not caught by s285 Insolvency Act 1986. The Respondent confirmed that his position in this regard was that he could not afford representation, rather than anything to do with the nature of these proceedings.

34. The Applicant submitted that Mr Johnson's evidence was factual, dealing with the Applicant's procedures when dealing with permission to distribute client money to charity.

35. The Applicant submitted that the Tribunal's comments on an LSB report were not in themselves a source of law on the requirements for a fair trial.

36. With regard to a Respondent's opportunity to be legally represented, the Applicant submitted that those who appeared at the Tribunal were often unable to instruct representatives but this did not amount to a deprivation of the opportunity to be represented in the context of whether a fair trial under Article 6 was possible. The Respondent was a solicitor. Although he was not a litigator, he should be well able to represent himself with regard to issues concerning his own professional conduct. The Applicant submitted that Article 6(3) related to criminal proceedings, but accepted that there was an analogy with civil proceedings where the consequences could be particularly serious. However, the right to the opportunity to be legally represented did not equate to the rights in all cases to have a "due process guarantee". Further, the Article 6(3) right to legal representation being free referred to "when the interests of justice so require…" There was no absolute right to have legal representation. The Applicant submitted that here the interests of justice did not require the Respondent to have legal representation, whether free or paid for by someone else.

37. The Applicant submitted that there was no inequality of arms to the extent which would suggest a breach of Article 6 rights.

38. With regard to the Respondent's submission that the Applicant had failed to give proper disclosure of documents, the Applicant submitted that they relied on the document exhibited to the Rule 5 and Rule 7 Statements. Whilst paragraph 20 of the Rule 7 Statement referred to "further documents obtained" by the Applicant, those documents were set out at paragraph 21, which referred to invoices dated 1 August

2014, 27 February 2015, an invoice dated 26 March 2015 and certain specific sums, set out in documents appended to the Rule 7 Statement, concerning withdrawals from client account. These items were the documents in addition to the ledgers which had been obtained and were relied on. The Applicant submitted that there had been no failure to disclose documents.

39. The Applicant submitted that in considering the application to amend the Rule 7 Statement (which had not yet been made) the Tribunal would consider the fairness of the proposed amendment; if the Tribunal considered that there would be unfairness to the Respondent, it would not allow the amendment. The Applicant told the Tribunal that the proposed amendment was not strictly necessary, but it would clarify the allegation and ensure it corresponded with the narrative to the allegation. The Applicant told the Tribunal that the proposed amendment had been raised as an issue now as the Respondent's Answer to the Rule 7 allegations referred to having the authority of Chandlers. The Applicant had then realised that it may be argued that the allegation was not as widely drafted as the narrative. The Applicant wanted to make clear that the allegation was not as limited as the way in which the Respondent appeared to have interpreted it. In any event, if the proposed amendment would be unfair to the Respondent, it would not be permitted.

Respondent's Further Submissions

40. The Respondent told the Tribunal that he accepted that Mr Johnson was not being called to give expert evidence and that he would not make an issue of that point.

41. The Respondent referred to the Applicant's submissions that many Respondents at the Tribunal were not represented, but noted that he had not mentioned whether those solicitors had been made bankrupt. The Respondent reiterated that he did not have the resources to be represented, and referred to Article 6(3) ECHR.

42. The Respondent submitted that the Applicant had deemed it appropriate to spend around £30,000 to bring this case against him; that figure was referred to on the Applicant's schedule of costs. A team of experienced solicitors and counsel had been deployed against an unrepresented Respondent.

43. The Respondent indicated that he was unclear if the Applicant still proposed to apply to amend the Rule 7 Statement; he had anticipated that this would be the first matter dealt with by the Tribunal.

44. In response to a question from the Tribunal, the Respondent confirmed that he was seeking an order which would have the effect of dismissing the proceedings against him. The Respondent confirmed that he specifically did not want an adjournment; this was the last thing he wanted.

The Tribunal's Decision

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

46. With regard to the order in which the preliminary applications were heard, it was clearly right to determine the Respondent's application first. If it succeeded, there would be no need to consider the Applicant's proposed amendment to an allegation.

47. The Tribunal noted the Respondent's complaint that the order permitting the issue of the Rule 7 Statement did not specify that the Rule 7 Statement was more than 12 months after the Rule 5 Statement. The Respondent submitted that it was a requirement under the Tribunal's Rules to include such a statement.

48. The Tribunal noted that Rule 7(2) of the Rules states:

> "Without prejudice to any further application which may be made, no supplementary Statement shall, unless by order of the Tribunal, be filed later than 12 months after the date of the Application or less than 30 days before the date fixed for the hearing of the application."

49. The Rules did not specify that the Tribunal's order should refer to the Rule 7 Statement being more than 12 months after the date of the application (or within 30 days of the hearing, as appropriate). In any event, on reviewing the Memorandum of an Application for Permission to Issue a Supplementary Statement, heard by the Tribunal on 29 October 2015, it was noted that the Memorandum referred to the application for permission being made under Rule 7 of the Rules. There was reference to the substantive hearing being listed for 14 and 15 January 2016. It was clear in all the circumstances that the reason the permission was required was because the Rule 7 Statement was more than 12 months after the application was lodged. The Tribunal had given permission, pursuant to Rule 7, and that order was recorded in the Memorandum dated 18 November 2015.

50. The Tribunal noted that the Respondent had, in effect, withdrawn his opposition to the inclusion of Mr Johnson's witness statement and his argument that this evidence constituted expert evidence. In any event, with regard to the question of expert evidence being submitted without the Tribunal's express permission, the Tribunal found: a) the evidence in the statement of Mr Johnson was in the nature of factual evidence rather than expert evidence; and b) the Tribunal was not bound to follow the provisions of the CPR, although it could have regard to the CPR when considering how best to manage a case. There was no requirement, under the Tribunal's Rules, for prior permission to call an expert or submit an expert report, although it would generally be desirable for the need for any expert evidence (by either party) to be flagged well in advance of any hearing. In any event, the Respondent would have the opportunity to cross examine Mr Johnson. The Tribunal was satisfied that there was no procedural or other unfairness which arose because of the use by the Applicant of Mr Johnson's evidence.

51. Having reviewed the papers in the case, the Tribunal was satisfied that there had been no failure by the Applicant to give disclosure. The Rule 7 Statement referred to the documents on which the Applicant relied, and those documents were exhibited. It was, of course, for the Applicant to prove the case; if there was an absence of relevant documents, that may well be construed against the Applicant.

52. The Respondent's primary position on the application was that he was unable to afford legal representation and so did not have the opportunity to have legal representation in these proceedings, which were of a serious nature. The Tribunal noted that, having asked him if his application was to adjourn to allow him the opportunity to obtain representation (after the discharge of his bankruptcy order), the Respondent had confirmed that he sought the dismissal of the case and not its adjournment. Accordingly, the Tribunal did not have to determine whether it may have been appropriate to adjourn the case to give the Respondent an opportunity to obtain legal representation.

53. The Tribunal noted that each case must, of course, be treated on its own merits. There were many cases in which a Respondent was unrepresented; the reasons for that, and whether any unfairness arose in the proceedings. In some cases, the lack of representation arose due to a Respondent's financial position, which may or may not involve bankruptcy. The Tribunal considered carefully whether there was any unfairness or inequality of arms in these proceedings, against this Respondent, which might amount to a breach of the Respondent's rights to a fair trial. If there were any such breach, the Tribunal would consider whether or not the breach could be mitigated by some lesser remedy than dismissing the proceedings.

54. In this instance, the Tribunal found that the Respondent was very articulate, eloquent and able. He had a good grasp of the case against him and had been able to refer the Tribunal to relevant authorities and text books. The Respondent had been able to prepare Answers to the allegations and witness statements. He had raised no health issues which would hinder his ability to present his case. The Respondent had ably put forward his argument to dismiss the proceedings, on which the Tribunal had deliberated at some length.

55. Whilst it appeared there was some authority for the proposition that disciplinary proceedings could be analogous to criminal proceedings, such that Article 6(3) ECHR was engaged, there was no authority of which the Tribunal was aware which suggested that it was inherently unfair to proceed where a Respondent was unrepresented. There was no source of "free" representation before the Tribunal e.g. a scheme similar to Legal Aid. As many Respondents were unable to afford representation, a decision that proceedings were always unfair in such a situation would stymie the work of the Tribunal, which had been established by statute to carry out its functions in relation to the professional misconduct of solicitors and their employees.

56. The Tribunal noted that the presentation of the documents in the case was far from ideal; the references in the Rule 5 and Rule 7 Statements to page numbers did not match the numbering in the hearing bundles. However, the Respondent had not raised any complaint about this or indicated that he had been unable to prepare his defence or for the hearing. In all of the circumstances, the Tribunal was satisfied that a fair hearing was possible and there was no breach of his Article 6 rights.

57. Further, the Tribunal noted it had a duty to conduct a fair trial. It would take into account at all stages the fact that the Respondent was unrepresented. In particular, it would allow him time for consideration of any points which arose during the hearing.

The Respondent was encouraged to speak up if he needed a break for any reasons, or wanted clarification or guidance on any procedural issue.

58. The Tribunal ruled that the case should proceed, and that it would hear the Applicant's application to amend the Rule 7 Statement.

Preliminary Matter (2) – Application to amend allegation 2.1

Applicant's Submissions

59. The Applicant made an application to amend allegation 2.1, such that it would read:

> "He withdrew money from a residual client balance in respect of time costs and expenses that he claimed to have incurred while investigating the ownership of that residual balance, when he had no authority from either the relevant client ***or the person or persons beneficially entitled to the residual client balance*** or the SRA for doing so. The withdrawals were therefore made in breach of Rule 17.2 and Rule 20 of the SRA Accounts Rules 2011 ("AR 2011"), and he acted without integrity in breach of Principle 2 of the Principles and in a way that undermined public trust in the legal profession in breach of Principle 6."

(Proposed amendment highlighted).

60. The Applicant told the Tribunal that the residual balance in question was held in relation to the enforcement by order for sale against a property in London on behalf of a client, Chandlers. Chandlers, a firm of accountants in Guernsey, had been the client, and had pursued a Mr A in relation to unpaid fees for work they had done for Mr A. That matter had been dealt with by a Mr Patrick Miller, who had joined the Firm and brought the balance with him. The Applicant told the Tribunal that the residual balance was the surplus after the debt to Chandlers had been discharged. Accordingly, The Applicant submitted, the monies belonged to Mr A or his heirs; it appeared Mr A had died some time ago.

61. The Applicant told the Tribunal that the allegation related to Rules 17 and 20 of the AR 2011; copies of the relevant Rules were included within the Rule 7 bundle. It further alleged that in withdrawing sums as he did the Respondent had acted without integrity and in a way which would diminish the trust the public would place in him and in the provision of legal services.

62. The Applicant referred to the narrative in the Rule 7 Statement which set out the facts relied on by the Applicant. The Applicant's allegation, in short, was that the Respondent had withdrawn the money when he had no authority from the client or the paying party i.e. Mr A or his heirs, or the Applicant. The Applicant's position was that the paying party was the person or persons who had the benefit of the money. The Applicant submitted that it was clear that the Respondent had not obtained the consent of Mr A or his heirs i.e. those entitled to the money.

63. The Applicant told the Tribunal that when the Applicant received the Respondent's Answer on 17 December 2015 it noted references to the consent of Chandlers, given by Mr P, a former partner of that firm. The Applicant submitted that in the light of the narrative to the Rule 7 Statement it was clear that the case against the Respondent was that he failed to obtain the consent of the person whose consent was actually required. However, to avoid argument on this point, Penningtons Manches LLP had written to the Respondent on 23 December 2015, setting out the proposed wording noted at paragraph 59 above. This gave the Respondent notice that the Applicant did not agree the Respondent's apparent interpretation of the allegation and indicated that scope of the allegation.

64. The Applicant submitted that given the contents of the body of the Rule 7 Statement, there was in fact no confusion about the case the Respondent had to meet. If the Respondent had had evidence that he had received authority from Mr A's heirs, he would have referred to that in his Answer. The proposed amendment was purely clarificatory and was not strictly necessary. The purpose of the proposed amendment was to ensure that the wording of the allegation matched the narrative which supported the allegation.

65. The Tribunal also noted the Applicant's submissions, set out at paragraph 39 above, concerning the proposed amendment; those submissions were made in the context of the Respondent's application to stay/strike out the proceedings for unfairness.

Respondent's Submissions

66. As set out in his written submissions on the issue of unfairness, the Respondent submitted that the application to amend the Rule 7 Statement had been made only after he had submitted his robust defence, on 17 December 2015. The Respondent submitted that his defence included evidence that he had been given authority to make the transfers by the relevant client and that the Applicant was now seeking to move the goal-posts. The Respondent submitted that the Applicant had taken a "scattergun" approach, in particular as it had not specified which parts of Rule 20 AR 2011 were alleged to have been breached. The Respondent submitted that his client in this instance was Chandlers, and the authority of Mr Pickford, the surviving member of Chandlers, meant that he had the authority of the client to make the transfers in question.

67. The Tribunal further noted the Respondent's submissions as set out at paragraphs 29 and 30 above. The Respondent opposed the proposed amendment to the Rule 7 Statement.

68. In response to a question from the Tribunal, the Respondent told the Tribunal that he could not say whether or not anything in his Answer to the allegations in the Rule 7 Statement would have been different if the allegation had been put in the way now proposed by the Applicant.

69. In his oral submissions in response to the Applicant's application, the Respondent stated that he was not an advocate; he had worked in conveyancing and had rarely appeared in Court. He was unrepresented and was pitted against a team of lawyers for the Applicant.

70. The Respondent stated that the allegation at 2.1 referred to Rule 20 AR 2011 and the requirement to obtain the authority of the client to make certain withdrawals. The Respondent submitted that he had obtained the authority of the client (Chandlers). The Respondent submitted that it was only after his Answer was submitted on 17 December 2015 that the Applicant sought to move the goal-posts.

71. The Respondent told the Tribunal that he relied on Rule 20.1(f), under which client money may be withdrawn from a client account when it is,

> "withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing."

The Respondent submitted that he had the consent of the client to make the withdrawals.

72. The Respondent referred to the allegation of dishonesty which attached to allegation 2.1 and submitted that he was not dishonest. He had been in contact with the surviving partner of Chandlers, who had authorised the withdrawals; the client was Chandlers, not Mr A or his beneficiaries and in any event the beneficiaries of Mr A were not known.

73. In response to a question from the Tribunal, the Respondent stated that he had appeared to deal with the allegations; this allegation referred to the consent of the client, which he had obtained.

The Tribunal's Decision

74. The Tribunal considered carefully the submissions of the parties as to the desirability of the amendment or otherwise, and considered whether there would be any prejudice to the Respondent if permission to amend were given.

75. The Tribunal was satisfied that the Respondent was well aware of the factual and other matters which he would need to address in the hearing. It did not consider, therefore, that there would be any prejudice to the Respondent in allowing the amendment. In particular, it was not submitted by the Respondent that his Answer to the allegation or his witness evidence would have been any different if the allegation had been worded as now proposed.

76. However, the Tribunal also noted that the Applicant had submitted that the amendment was not essential to its case. In these circumstances, the fairest decision was that the amendment should not be made and the case should proceed on the basis of the allegations as originally pleaded.

Preliminary Matter (3) – History of the proceedings

77. The application in this matter was made on 7 August 2014, and allegations in the Rule 5 Statement were made against a total of five Respondents in relation to the winding down of the Firm of Andersons. Further allegations were made against the First Respondent alone.

78. At a Case Management Hearing ("CMH") on 24 November 2014 the Tribunal agreed to sever the allegations made against the First Respondent alone from those against all five Respondents. Since that point, the two cases had been separated and papers redacted such that the division of the Tribunal dealing with these allegations received no information or papers concerning the allegations against the Respondent and four others.

79. At a CMH on 16 April 2015 a division of the Tribunal agreed to the withdrawal of allegations against the Third Respondent (Margaret Ann Hunter), Fourth Respondent (Zahid Nizam) and Fifth Respondent (Paul Wade Richardson) on the basis of their admissions to certain matters and pursuant to the terms of a Regulatory Settlement Agreement ("RSA"). This division of the Tribunal was not aware of that outcome or the terms or details which were put before the Tribunal on 16 April 2015. A Memorandum of that hearing was prepared but it was not seen or read by this division of the Tribunal.

80. A hearing dealing with allegations against the Respondent and one other (Mr Robert Alan Ainsworth) proceeded on 28 and 29 April 2015 and was resumed part-heard on 7 October 2015. At that point, the case against Mr Ainsworth was concluded and the allegations concerning the Respondent in that part of the case were disposed of. The division of the Tribunal hearing the current case was aware that there had been part of the case which had been concluded, but was unaware of the outcome and any findings made in those proceedings. The first information this division received about the earlier part of the case was provided after it had made findings in this case and requested details of any previous matters in which findings had been made against the Respondent.

Factual Background

81. The Respondent was born in 1943 and was admitted to the Roll of Solicitors in 1967.

82. Although there had been salaried partners, the Respondent was the sole equity partner of Andersons Solicitors of Boswell Cottage, South End, Croydon, Surrey CR10 1BE ("the Firm"). The Firm closed on 29 December 2013.

The Respondent's IVA Proposal

83. In December 2013, the Respondent approached Herron Fisher, an insolvency and business recovery consultancy, in respect of a possible Individual Voluntary Arrangement ("IVA") with his creditors.

84. A signed IVA Proposal, which set out the Respondent's assets and his plans to liquidate them, was sent by Herron Fisher to the Respondent's creditors on 6 February 2014 and a meeting of creditors was scheduled for 24 February 2014, to consider, and vote on, the IVA Proposal.

85. The IVA Proposal, signed by the Respondent, included the following statements:

> "7. The details of my assets and any security held by creditors over those assets are set out in the attached statement of affairs. All of my property, other than assets specifically excluded in the terms of this proposal, belonging to or vested in me at the date of commencement of the arrangement which would form part of my estate in a bankruptcy shall be subject to the arrangement and be an asset."

And

> "I understand that … I am liable to criminal prosecution if I fail to make full disclosure to my Nominees or Supervisors or disclose false or misleading information to creditors to procure their agreement to this proposal".

86. After receipt of the IVA Proposal certain creditors informed Herron Fisher that the assets listed in the Proposal were inaccurate and/or incomplete. In particular, there had been no mention of a flat at the development known as The Oxygen in London E16 ("the Flat").

87. The Land Registry Property Register recorded that the Respondent was the joint legal owner of the Flat, together with Irene Anderson, the Respondent's wife ("Mrs Anderson"). The Register showed that they held the Flat as tenants in common.

88. As a result of the non-disclosure of the Respondent's (apparent) ownership of the Flat, Herron Fisher decided to withdraw their support for the IVA and cancelled the planned creditors' meeting. Mrs Nicola Fisher of Herron Fisher made a complaint to the Applicant regarding the Respondent's conduct on 21 March 2014.

89. On 1 April 2014 the Applicant wrote to the Respondent seeking his explanation for this matter. In his reply dated 14 April 2014, the Respondent stated, "I am a trustee of the property referred to in your letter, which is beneficially owned by [Mrs Anderson]".

90. In a statement of financial means provided to the High Court on 18 November 2014 in relation to appeals against an earlier decision of the Tribunal, it was stated that "[The Respondent] and his wife together own a second flat in London valued at approximately £300,000 with a mortgage of approximately £195,000." It was accepted by the Respondent that this was a reference to the Flat.

Closure of the Firm and residual balances

91. A report by a forensic investigation officer of the Applicant, Mr Jonathan Chambers ("the FI Officer") dated 11 March 2014 identified that the Firm continued to hold significant sums of client money following the Firm's closure, in the form of residual balances.

92. The Respondent took personal responsibility for disposing of these residual balances until around the time he was made bankrupt on 9 March 2015.

93. The Firm's accounts showed that after the Firm's closure the Respondent had withdrawn sums in the matter of "Chandlers/Mr A" in a way which the Applicant alleged was in breach of the AR 2011.

The Chandlers/Mr A file

94. Following its closure, the Firm continued to hold the sum of £66,676.54 in respect of a file relating to a client identified as "Chandlers", which had the following matter description: "17361-1-4 – [OA]", where "OA" were the initials of an individual who will be referred to as Mr A. The file will be referred to as the Chandlers/Mr A file. Chandlers was a firm of accountants based in Guernsey, which firm no longer exists.

95. The client ledger for the Chandlers/Mr A file showed that on 1 October 2003 £58,633.15 was paid into a client deposit account, where the funds remained dormant save for periodic receipts of interest. The Firm had held the balance on the Chandlers/Mr A file for over 10 years at the date the Firm closed.

96. By 27 November 2013, the date on which the funds were taken off deposit and transferred into the Firm's general client account, the sum had increased to £66,611.93.

97. The Chandlers/Mr A file and related client funds had been transferred to the Firm by a consultant solicitor named Patrick Miller ("Mr Miller") when he joined the Firm. Mr Miller subsequently left the Firm, leaving the matter and the related funds behind.

98. On 4 March 2014, the Respondent applied to the Applicant for authority to pay the funds to charity, pursuant to Rule 20.1(k) of the AR 2011. The Applicant asked for further information from the Respondent in a letter dated 17 April 2014, indicating that it did not have sufficient information to make a decision. The Respondent was asked to provide some further information, including whether he had asked Mr Miller for any information about where the files for the matter may be.

99. The Applicant wrote to Mr Miller to seek further information in respect of the matter. On 1 June 2014, Mr Miller sent a letter to the Applicant in which he reported:

99.1 The Firm's client had been Chandlers, who in turn had advised Mr A;

99.2 At the time of Mr A's death, Chandlers' fees had not been paid;

99.3 In order to recover that debt, Chandlers obtained a charging order over a property in London owned by Mr A which was subsequently sold and the judgment debt was satisfied from the proceeds;

99.4 The funds held by the Firm represented the balance after paying the judgment debts and costs with interest added and were due to the heir(s) of the late Mr A; and

99.5 There had been a dispute between Mr A's heirs in Nigeria such that by the time Mr Miller left the Firm, the appropriate heir had not been identified.

100. On 18 June 2014 the Applicant sent a copy of Mr Miller's letter to the Respondent, with a request that the Respondent make certain enquiries (e.g. applying for office copy entries in respect of the property which had been sold and to carry out internet searches concerning a dispute between individuals sharing Mr A's surname concerning a property in Oxfordshire).

101. The Respondent carried out further enquiries, including in relation to Chandlers, which included contacting the sole surviving partner of Chandlers, a Mr P.

102. On 13 January 2015, Mr P sent an email to the Respondent in which he stated that he believed Chandlers had held a charge on Mr A's property in respect of unpaid fees, and that once those fees were paid, the balance should be paid to Mr A's representatives. Mr P subsequently instructed Guernsey lawyers Babbé Advocates ("Babbé") to liaise with the Respondent in respect of his investigations.

103. On 11 February 2015 the Respondent had a meeting in Guernsey with Mr P and lawyers from Babbé, together with Mr Peter Coe ("Mr Coe") a former salaried partner of the Firm. The Respondent made a note of that meeting. That note set out what was understood to be the history of the Chandlers/Mr A matter and that Mr P had explained that his former partner, Mr Chandler, had died. The note recorded:

> "… he [Mr P] vaguely recalled the case of [Mr A] but was unsure whether any fees were outstanding to Chandlers. He confirmed that he would carry out a further search to establish whether any papers still existed…
>
> Mr P asked me if I considered it reasonable to cover his fees and that of his lawyers in connection with the current engagement and I confirmed that I considered the request to be reasonable…
>
> … No charge appeared to subsist in favour of Chandlers and, accordingly, prima facie (it) would appear, that any charge which Chandlers may have had, assuming these were the relevant properties, had now been satisfied…"

104. After concluding its enquiries, Babbé concluded that no portion of the residual funds was due to Chandlers and wrote to the Respondent by email on 27 February 2015 as follows:

> "… we now understand the position to be as follows:
>
> 1. Chandlers held an equitable charge dated 25 November 1992 over the Property;
> 2. Chandlers were granted a Court Order dated 4 June 1993 from Croydon County Court (presumably to enforce the equitable charge);
> 3. Chandlers sold the Property on 29 January 1997 (see attached Transfer) for £75,000; and
> 4. The equitable charge was cancelled on 29 January 1997 as a result of the sale of the Property.
>
> …Whilst we await a copy of the Court Order and equitable charge, the information above suggests that the charge was discharged…"

A report to the Applicant by Babbé dated 20 April 2015 (referred to further below) stated, "We concluded that no funds held in the client account of [the Firm] were due to Mr P or [Chandlers].

105. On 22 September 2015 the Applicant gave authority for the funds to be withdrawn pursuant to Rule 20.1(k) of AR 2011. The funds, totalling £35,060.22 which were held by the Firm at that time, were donated to charity.

Withdrawals from the Chandlers/Mr A funds, August 2014 to May 2015

106. The ledger for the Chandlers/Mr A file recorded the following withdrawals from client account prior to the payment of funds to charity.

Date	Amount withdrawn £	Narrative
18 August 2014	3,740	Transfer of costs (client to office account)
18 December 2014	5,507.50	Bill 38614 (client to office transfers)
3 February 2015	691	Times Newspaper
3 February 2015	258	Air fares to Guernsey
16 February 2015	1,129.82	Balance of disbursements (as per bill)
28 February 2015	8,950	Bill 38615 (client to office transfer)
28 February 2015	7,251	Babbé
2 April 2015	2,838.50	Babbé
21 May 2015	1,250	PHC Law
Total	**31,616.32**	

107. The ledger entries and invoices indicated that these withdrawals related to time costs and expenses or disbursements which the Respondent claimed to have incurred in carrying out his enquiries into the ownership of the Chandlers/Mr A funds.

108. The sum of £12,550 was withdrawn and paid into office account in respect of the following invoices raised by the Respondent:

108.1 Invoice 1 August 2014 comprising £3,600 for "professional charges" (i.e. time costs) and £140 for travel expenses;

108.2 Invoice 27 February 2015 comprising £8,950 for "professional charges" and £2,179.02 for disbursements;

108.3 £2,319.02 for expenses, including:

108.3.1 £258 in respect of air fares to Guernsey;
108.3.2 £415.65 in respect of hotel costs;
108.3.3 £691.20 in respect of advertising costs (Times Newspaper)
108.3.4 £470 in respect of "administration costs" incurred by Mrs Anderson and Mrs Coe, the wife of Mr Coe.

108.4 The sum of £1,250 was paid to PHC Law Consultants Limited, a company owned by Mr Coe, in respect of an invoice dated 26 March 2015.

108.5 £10,089.50 was paid to Babbé.

109. None of the invoices or notes of disbursements referred to above were sent to the heirs of Mr A; those heirs were never located. The Respondent did not seek or obtain the authority of either Mr A's heirs or the Applicant for the withdrawals set out above, either in respect of time costs or out of pocket expenses. The Respondent sought authority from the Applicant to pay the Chandlers/Mr A balance to charity in March 2014. He subsequently made a number of further applications to the Applicant to pay residual balances in excess of £500 to charity.

110. Guidance published on the Applicant's website on 31 October 2014 entitled, "Withdrawal of residual client balances" summarised the legal position and explained the regime in the AR 2011. The Guidance included the following points:

110.1 Solicitors had no authority to take any costs, even out of pocket expenses, from residual client balances unless they obtained consent from the relevant client;

110.2 If the client could not be found, the Applicant *may* permit the solicitor to take reasonable out of pocket expenses from the residual balance, although the solicitor remained accountable to the client for such expenses; and

110.3 Time costs could never be taken from client monies without client consent.

Allegation 2.2

111. The Respondent's Practising Certificate ("PC") had been due for renewal on 31 October 2014. On 27 November and 4 December 2014 the Applicant sent email reminders to the Respondent to renew his PC, but he did not do so. On 12 December 3014, the Applicant revoked the Respondent's PC, and sent him an email that day to notify him of this.

112. The email on 12 December 2014 was sent to the Respondent's email account with BT Connect. On 8 December 2014 a "read receipt" was sent from that email account in respect of an email sent to the Respondent by Mr SK, a Regulatory Supervisor of the Applicant. The Applicant was satisfied, therefore, that this was an email address which the Respondent used at the time.

113. After 12 December 2014, the Respondent sent a number of letters to third parties, in particular to Babbé, which referred to "Anderson Solicitors". The name of the Firm which closed on 29 December 2013 was "Andersons Solicitors".

114. On 27 February 2015, the Respondent sent a letter with an invoice for his time costs to Babbé; the invoice totalled £11,184.02 and included disbursements and was on notepaper headed "Anderson Solicitors". The letter referred to "our fees and disbursements which will be deducted from funds held on account" and the invoice referred to "Professional charges in relation to the above matter."

115. On 20 April 2015 Babbé made a complaint to the Applicant, noting that it had been concerned to receive a letter and invoice from the Respondent of 27 February 2015 and had then written to the Respondent asking him to explain the use of the "Anderson Solicitors" headed notepaper, "… given that the Firm of Andersons [i.e. the Firm] had ceased to practice and that we could find no record of a firm called "Anderson Solicitors" being authorised or regulated by [the Applicant]".

Allegation 2.3

116. On 8 December 2014, a Supervisor of the Applicant wrote to the Respondent seeking his comments on various matters which had arisen during the course of the Applicant's investigations. The Respondent was asked to reply by 5pm on 23 December 2014.

117. The Supervisor's letter was sent to two known email addresses for the Respondent, including the BT Connect address mentioned above and a Hotmail address. On 8 December 2014 the Supervisor received a "read receipt" from the BT Connect address, but the Supervisor did not receive a reply to the letter of 8 December by 23 December 2014.

118. On 7 January 2014 the Supervisor sent a further letter to the Respondent, drawing his attention to the Respondent's duty to co-operate with the Applicant pursuant to Principle 7 of the 2011 Principles, and asking for a reply to the Supervisor's earlier letter by 5pm on 14 January 2015.

119. On 12 January 2015 the Respondent sent an email to the Supervisor in which he acknowledged receipt of the Supervisor's two letters. The Respondent stated that he was on holiday and would "consider an appropriate reply during the week commencing 26 January 2015".

120. The Supervisor did not receive any further reply from the Respondent during the week commencing 26 January 2015 or at all.

121. On 24 July 2015 a Supervisor of the Applicant wrote to the Respondent seeking his comments on various additional matters, including those relating to the Chandlers/Mr A balance. The Respondent was asked to reply by 10 August 2015. The letter was sent to the Respondent's postal address as well as the BT Connect email account.

122. No reply was received from the Respondent prior to the date of the Rule 7 Statement.

123. On 28 August 2015 and Authorised Officer of the Applicant authorised the addition of the matters in this statement into these proceedings.

Witnesses

124. The following section outlines the evidence of the witnesses, but does not attempt to set out a verbatim report on that evidence. Where evidence was found by the Tribunal to be important in determining any issue, it will be specifically recorded in relation to the relevant allegation.

Mr Dean Johnson

125. Mr Dean Johnson, a solicitor employed by the Applicant as an Ethics Adviser, confirmed that the contents of his witness statement dated 17 December 2015 were true. He was cross examined by the Respondent.

126. Mr Johnson's witness statement dealt with his role in dealing with applications for authority to pay untraced client funds to charity under Rule 20 AR 2011, and the advice which would be given to solicitors in certain circumstances relating to applications for authority. In response to questions from the Respondent, Mr Johnson confirmed that none of the correspondence from his department concerning the Chandlers/Mr A matter had stated that the Respondent could not take out of pocket expenses; this included his own letter to the Respondent dated 5 December 2014 in which Mr Johnson had asked the Respondent to arrange to place an advertisement in a national newspaper seeking relatives of Mr A. However, the Respondent had not asked for guidance on taking out of pocket expenses, including in relation to the advertisement costs or indicated that he wanted to claim such expenses. Mr Johnson told the Tribunal that he did not know that the Respondent did not have a Practising Certificate from December 2014.

127. Mr Johnson told the Tribunal that, in his view, receipt of the invoices from Babbé was not in itself sufficient to establish that those invoices should be paid from the client account. Mr Johnson referred the Tribunal to Rule 20.2 AR 2011 which referred to the need to establish the ownership of the money; there would be times when money held on the client account did not in fact belong to the client. Mr Johnson gave the example of a probate matter, in which the client is the executor but the money on client account could not simply be paid to the executor if there was reason to believe that the executor may act in breach of trust and not account to the beneficiaries for the sums due. A solicitor withdrawing monies on the authority of a client would have to be satisfied that the client was entitled to give that instruction.

The Respondent

128. The Respondent gave evidence on his own account. He confirmed that the contents of his two witness statements dated 30 March 2015 and his statements in response to the Rule 5 and Rule 7 Statements dated 17 December 2015 were true. The Respondent further adopted his oral submissions to the Tribunal, which he confirmed to be true.

129. The Respondent told the Tribunal about the history of the Firm and the circumstances in which it closed together with the difficulties he had experienced in dealing with historic client balances when the Firm closed.

130. The Respondent told the Tribunal about the circumstances in which the Flat had been purchased. In particular, there had been a period of over two years between paying the initial reservation deposit on the Flat and completion of the development (and purchase), from 2006 to 2008, during which period the Firm was affected by the recession and mortgage lenders were more reluctant to lend. The Respondent told the Tribunal that Mrs Anderson had taken advice from a mortgage broker. (See also the account of the evidence of Mr Guest below). The Respondent told the Tribunal that

he agreed to make the mortgage application jointly with Mrs Anderson and told the Tribunal that the Flat was not a home but was a business venture. The Respondent told the Tribunal that there were some inaccuracies in the statement he had made in the High Court concerning Mrs Anderson.

131. The Respondent told the Tribunal that there was no intention on completion of the purchase of the Flat that he would have any financial interest in the Flat. The Respondent told the Tribunal that he had paid no capital or interest on the Flat. The rental income from the Flat had supported the interest-only mortgage payments.

132. The Respondent told the Tribunal that he and Mrs Anderson were tenants in common, and that he was a trustee; they were not joint tenants. The Respondent confirmed that there had been no declaration of trust; as at May 2008 when the purchase completed, he had been occupied by problems in the firm. The Respondent told the Tribunal that he never had an intention to claim any financial interest in the Flat. The Respondent told the Tribunal that he and Mrs Anderson did not have joint bank accounts; they kept their financial affairs separate.

133. The Respondent referred to paragraph 7 of the IVA Proposal, set out at paragraph 85 above, which set out that the Proposal would include "all of my property… belonging or vested in me… which would form part of my estate in a bankruptcy…" The Respondent told the Tribunal that as he had no financial interest in the Flat it was not appropriate to refer to it in the IVA Proposal. The Respondent told the Tribunal that he had been shocked when he was told by the Insolvency Practitioner that a disaffected member of his staff had suggested he had an interest in the Flat. The Insolvency Practitioner had obtained a copy of the Land Registry title, which showed the Respondent was the joint legal owner, and had not given the Respondent the opportunity to explain the circumstances of the acquisition of the Flat.

134. The Respondent went on to deal with matters in the Rule 7 Statement.

135. The Respondent told the Tribunal about the circumstances in which Mr Miller had joined and later left the Firm. The Respondent told the Tribunal he probably contacted Mr Miller about the Chandlers/Mr A matter early in 2014, but Mr Miller had not been very helpful. The Respondent told the Tribunal that he suggested to the Applicant that the Applicant should write to Mr Miller; all that he had told the Respondent was that he thought the client was Chandlers.

136. The Respondent told the Tribunal that he made further enquiries later in 2014. Mr Coe had taken a holiday in Guernsey and had met a Mr C, who appeared to be connected to Chandlers Ltd; this appeared to be a successor to Chandlers. In due course, it transpired that Mr P, as a surviving partner of Chandlers, was the correct person to represent Chandlers. The Respondent told the Tribunal that in the light of s36(1) of the Partnership Act 1890 he understood that Mr P had the authority to deal with matters. The Respondent told the Tribunal that it had not been apparent who the client was, or where the money had come from; he had been very conscious of money laundering issues, and so wanted to be sure who really represented Chandlers.

137. The Respondent described a trip he and Mr Coe made to Guernsey, and in particular a meeting with Mr P and several lawyers from Babbé on 11 February 2015. The Respondent was satisfied at that meeting that Mr P was who he said he was and that he represented Chandlers; the Respondent's aim had been to establish the identity of the client and the fate of the funds held on the ledger.

138. The Respondent told the Tribunal that he had made it clear to Mr P and Babbé that the Firm had closed down; his correspondence with them was from the Firm's office address. The Respondent told the Tribunal that the letters which were on notepaper headed "Anderson Solicitors" were the result of an error; the Respondent had not noticed that the secretary had omitted the letter "s" from the Firm's name and that this was a genuine mistake. The Respondent told the Tribunal there was nothing deliberate about omitting the "s". The Respondent told the Tribunal that Babbé knew the Firm had closed and that the Respondent was seeking a home for the money held. Babbé had submitted three invoices for payment from the client account.

139. The Respondent referred to an invoice from Babbé dated 27 February 2015. This read, "Payable by Messrs Coe and Anderson from client account monies held in relation to Forest Hill property", was expressed to be for the period 23 to 27 February 2015 and was for £1,956 plus disbursements of £540, being a total of £2,496; it was expressed to be for "professional charges in relation to the above matter up to and including 27 February 2015, all correspondence and telephone calls." The Respondent told the Tribunal that in the light of this, it was clear in his mind that Babbé were authorising payment of their bill from the client account. The Respondent told the Tribunal that whilst a solicitor at Babbé had queried his bill on "Anderson Solicitors" paper, Babbé had incorrectly issued an invoice in the name of a company; this had been corrected, after an apology. The last invoice that the Respondent had submitted was well after he had explained that the Firm had closed and yet Babbé still deemed it appropriate to ask for payment of their invoice from client account; all concerned had believe it was appropriate to do this.

140. The Respondent told the Tribunal that he had carried out a detailed investigation, on the instructions of the Applicant, which had given him authority to carry out Land Registry searches and place an advertisement. It had not been his intention to dupe the public or con anyone into believing that he was holding himself out as a practising solicitor; he had been trying to get to the bottom of the Chandlers/Mr A money and had acted with integrity in doing so.

141. The Respondent noted that Mr Johnson had stated that the Applicant would consider what reasonable out of pocket expenses were, and he asked the Tribunal to consider whether it was reasonable for him and Mr Coe to travel to Guernsey to establish if Mr P had the authority to deal with these funds. The Respondent told the Tribunal that the expenses had been reasonably incurred.

142. The Respondent told the Tribunal that in due course the Applicant had given authority to pay the money to charity, notwithstanding that it had come to light that there was a firm which was instructed by one of the (apparent) administrators of Mr A's estate. It was not clear if there had been a Grant of any kind, or if Mr A had left a Will or died intestate, but it appeared there was a family dispute about his estate.

143. After a short break, the Respondent was cross examined by the Applicant.

144. The Respondent confirmed that he had specialised in conveyancing and had a good understanding of law and practise in that field. The Respondent told the Tribunal that joint owners of a legal estate could only hold property as joint tenants, not tenants in common. The beneficial interests in the Flat had been held as tenants in common. As at February 2014, the Respondent had been aware of the decisions in both Stack v Dowden and Jones and he was probably aware in outline of the former in 2008, when the Flat was bought, but could not be sure. The Respondent recalled attending a lecture before the Firm closed on what clients should be advised in the light of both of these cases. The Respondent told the Tribunal that he understood both of these cases related to properties which were or had been the home of the parties, whereas the Flat was a buy to let property; some principles may therefor differ and the Respondent did not agree that the overarching principles would apply.

145. The Respondent agreed that a declaration of trust would have clarified matters and that in the absence of such a declaration, the Court would have to decide on the beneficial interests; there was a rebuttable presumption that the beneficial interests followed the legal title. The Respondent told the Tribunal that in considering such a case, the Court would take into account the whole course of conduct between the parties.

146. The Respondent agreed that as of February 2014, he did not know which way a Court would decide, but so far as he was concerned the Flat morally and financially belonged to Mrs Anderson; it would be repugnant to claim an interest when it had been bought by Mrs Anderson. The Respondent reiterated that, in his mind, the Flat belonged to Mrs Anderson. It was put to the Respondent that as an experienced conveyancer, he would recognise that the position a Court would adopt was not certain. The Respondent told the Tribunal that he was pretty certain the Flat belonged to Mrs Anderson.

147. It was put to the Respondent that 70% of the purchase price had been paid by a joint mortgage, in the names of the Respondent and Mrs Anderson. The Respondent told the Tribunal that this was an interest-only mortgage, on which no capital repayments were made, but he accepted that he had jointly borrowed 70% of the capital used to buy the Flat. The Respondent told the Tribunal that he accepted that as the legal owners, he and Mrs Anderson would have to repay the mortgage from the proceeds of sale and that they had a joint and several liability to repay the capital. However, the Respondent disagreed with the proposition that 30% of the purchase price had been paid by Mrs Anderson and the remaining 70% by the Respondent and Mrs Anderson jointly. The Respondent told the Tribunal that there had been no misrepresentation to the mortgage lender. The Respondent told the Tribunal that if Mrs Anderson did not pay the mortgage, or repay the capital, he would have to do so.

148. The Respondent told the Tribunal that the rental income from the Flat had been paid into the Firm for a short time, after problems with the initial letting agents. The Respondent told the Tribunal that he understood this was to give some assurance to the tenants. The Respondent told the Tribunal that he had derived no benefit from this arrangement, as he would have accounted to Mrs Anderson for that income. The Respondent could not recall why those payments to the Firm had stopped.

149. The Respondent accepted that a tenancy in common was a form of property interest. The Respondent referred to the case of Official Receiver for Northern Ireland v Snoddon and McShane [2014] NIMaster 5 (March 2014) ("Snoddon") in which the Court had held that notwithstanding the way in which the property had been purchased, one of the parties had no beneficial interest. The Respondent agreed that the tenancy in common could define the beneficial interests.

150. The Respondent told the Tribunal that he thought Mrs Anderson paid all of the service charges, management fees and the like concerning the Flat. An invoice for management fees had been included in the list of debts in the IVA Proposal, but the Respondent told the Tribunal that this had been in error; he had bundled up a number of demands for payment received both at home and at the Firm's offices. It had been a mistake to include it as a personal debt of the Respondent, which he must have overlooked.

151. The Respondent told the Tribunal that in January 2006, when the reservation deposit was paid, it was intended that he would contribute 50% of the purchase price. As time passed, Mrs Anderson paid all of the deposit, and their intention changed. The Respondent told the Tribunal that it would be immoral for him to claim an interest when he paid nothing. The Respondent told the Tribunal that his name was on the mortgage as Mrs Anderson had not wanted to lose the 30% deposit she had pair and she had been advised to include the Respondent on the mortgage. The Respondent agreed that without his name on the mortgage, Mrs Anderson may have lost her deposit and been unable to obtain a mortgage.

152. In answer to a question from the Tribunal about what would happen to the Flat in the event of the death of one of the legal owners, the Respondent told the Tribunal that Mrs Anderson's Will would pass all of her estate to her children, save for a right to remain in the matrimonial home for life if he survived Mrs Anderson.

153. The Respondent confirmed that the reference in the statement to the High Court in November 2013, where it was said, "[The Respondent] and his wife together own a second flat in London valued at approximately £300,000 with a mortgage of approximately £195,000" was a reference to the Flat. The Respondent told the Tribunal that he agreed that he and Mrs Anderson owned the Flat jointly, legally. It was put to the Respondent that if this was not an asset in which he had an interest, it was not relevant to include it in the statement to the High Court. The Respondent told the Tribunal that the statement did not refer to the beneficial interest, and he did not know whether the Court would assume that it was jointly owned beneficially as well as legally. The Respondent accepted that the statement indicated that, at the time, there was equity in the Flat of approximately £105,000, but told the Tribunal that there was nothing there about the beneficial interest. The Respondent reiterated that he had no beneficial interest in the Flat, but he had needed to disclose it to the High Court because he owned it. It was put to the Respondent that the purpose of the statement to the High Court had been to give the Court some idea of his ability to pay a fine and/or costs. The Respondent told the Tribunal that the statement did not go into detail; it was very sparse. The Respondent accepted that he needed to give the High Court an idea of his ability to pay, but an asset held on trust would not be relevant to this.

154. The Respondent accepted that there was a rebuttable presumption as to the beneficial ownership of property which was jointly owned in law. The Respondent accepted that the burden would be on him to persuade a court that the presumption should be rebutted. The Respondent accepted that if he had told the creditors about the Flat, they would want to argue about the beneficial interest. The Respondent queried why the creditors should complain if he did not refer to something which would not form part of his estate in bankruptcy. The Respondent accepted that the IVA system was one in which the creditors relied on the information they were given about assets and other liabilities in order to make an informed decision about whether or not to approve the IVA; an IVA would generally be approved if creditors thought they would receive a better dividend than on bankruptcy. The Respondent disputed the proposition that he should have given full disclosure of all the assets which might fall into his bankrupt estate, in the light of paragraph 7 of the IVA Proposal (see above). The Respondent agreed that if he were a creditor, he would want to know if the debtor had a beneficial interest in an asset and that if he had disclosed the Flat, it would be clear there was joint ownership in law. The Respondent would, of course, say that the Flat was owned on trust for Mrs Anderson. The Respondent maintained that the Flat had not been mentioned because it was not relevant. He had been given no opportunity by the Insolvency Practitioners to explain that he had no beneficial interest; their support for the IVA had simply been withdrawn. The Respondent appeared to accept that the Flat was a material piece of information, but when asked further about this told the Tribunal he was not sure he agreed it was material. It was put to the Respondent that the honest thing to do was to disclose the Flat and inform creditors of the Respondent's position that it was held on trust. The Respondent told the Tribunal that, based on paragraph 7 of the IVA Proposal, it was honest not to list the Flat as he had no beneficial interest in it.

155. At a later point in the cross examination, the Applicant returned to the question of ownership of the Flat and referred the Respondent to an extract from the copy Lease of the Flat, dated 6 May 2008. The Land Registry document which was submitted with the Lease included a section (LR14) in which several options were given for the way in which the Flat was to be held; one option was "The Tenant is more than one person. They are to hold the Property on trust (….)" It was put to the Respondent that this was a relatively straightforward way in which to record if the beneficial entitlement differed from the legal title. The Respondent agreed with this; the document could be completed to show the respective interests of the owners. The Respondent told the Tribunal that he would not describe Mr Coe, who had carried out the conveyancing, as a competent conveyancer. The Respondent agreed that he had been in partnership with Mr Coe for about 20 years, and that Mr Coe had worked in conveyancing. It was unfortunate that the document had not been completed. The Respondent told the Tribunal that although he did not regard Mr Coe as competent, on a day to day basis his work was "OK"; on this occasion he had not completed the Land Registry documents properly.

156. The Respondent was asked about the Chandlers/Mr A matter.

157. The Respondent agreed that he was broadly familiar with the provisions of the AR 2011. The Respondent accepted that Rule 17.2 AR 2011 referred to a situation where a solicitor properly required payment of fees i.e. was entitled to payment and that a bill or other written notification of costs had to be given to the "client or paying

party". It was put to the Respondent this meant the bill should be sent to the person who would pay/to whom the money on client account belonged, which was not necessarily the client. The Respondent told the Tribunal that is he knew who the client was, the bill would be sent to the client; Rule 17.2 gave a solicitor the alternative of sending the bill to the client *or* another party. The Respondent was asked if it was sufficient just to inform the client about costs, even if the client had no interest in the money from which the costs would be paid. The Respondent told the Tribunal that the money was held for Chandlers, not Mr A, so Chandlers was the paying party; the money was Chandlers' money.

158. The Respondent told the Tribunal that the money had come into the Firm from Mr Miller's previous firm. It had been suggested in August 2014 that Chandlers had obtained a charging order over Mr A's property and the Respondent had investigated this further. The Respondent accepted that he now knew that the explanation given by Mr Miller, to the effect that there had been a charging order, a forced sale and that the judgment in favour of Chandlers had been satisfied, was correct. It was noted that the Applicant accepted that Chandlers had been the Firm's client. It was put to the Respondent that the information provided by Mr Miller in June 2014 would have given strong grounds for believing that the monies held by the Firm were the surplus after the sale of Mr A's property. The Respondent did not accept this, and told the Tribunal that he had established that Chandlers had been the client by meeting with Mr P/ Babbé; he had not known for certain if Chandlers were owed any money. The Respondent accepted that Mr Miller had said the monies were surplus, but this had not been established at that time.

159. It was put to the Respondent that if he took money from this client account, it would be Mr A/his heirs who were paying. The Respondent disagreed, as he did not know if Chandlers were owed any money. The Respondent accepted that, if Mr Miller was right, in effect it would be Mr A/his heirs who were paying costs on this matter. The Respondent told the Tribunal that he discovered that Mr Miller had been correct in about February 2015. With hindsight, the Respondent accepted that it was Mr A's heirs who had met the liabilities on this matter. The Respondent told the Tribunal that he believed the client was Chandlers and it took him about 6 to 8 months to establish that no money was due to Chandlers. The Respondent accepted that no bill or written notification of costs had been given to Mr A's heirs, but he had sent bills to his client.

160. It was put to the Respondent that the money on the client account in this matter was held on trust for Mr A's heirs. The Respondent denied this, as the client account was in the name of Chandlers. It was put to the Respondent that given what he knew – or had reason to believe – he should not have paid the money to Chandlers if Mr P had asked for it. The Respondent told the Tribunal that he thought he would have paid the money to Chandlers as it would then have been their duty to find out whether Mr A's heirs were entitled to it; it would have been Chandlers' problem, not his. The Respondent told the Tribunal that this had not been a trust account and the Firm's client was Chandlers.

161. The Respondent accepted that Rule 20.1 AR 2011 set out the only circumstances in which money could be withdrawn from client account. It was put to the Respondent that Rules 20.1(a) referred to a situation where a payment was "properly" required to or on behalf of a client, or other person on whose behalf the money was being held.

The Respondent accepted that it was necessary to show that the person for whom the payment was made authorised it. It was put to the Respondent that to justify the withdrawals he had made from client account, he would need the agreement of Mr A's heirs. The Respondent denied this, as the money was held for his client, Chandlers, to whom his duties were owed.

162. The Respondent was referred to Rule 20.1(f), on which he relied in his skeleton argument. This referred to withdrawals from a client account when it was, "withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed … to the client in writing". It was put to the Respondent that that Rule could not apply where the situation was covered by Rule 20.1(a). The Respondent referred the Tribunal to the three bills from Babbé, which were instructions to pay this money from client account, on the instructions of the client.

163. In response to a series of questions from the Applicant, the Respondent did not agree the assumption on which the questions were based, i.e. that the agreement of Mr A's heirs was required in order to make payments from this client account. The Respondent noted that the wording of the allegation referred to having the consent of the client, which was Chandlers; the Respondent told the Tribunal that he had had the consent from the client, Chandlers. It was put to the Respondent that if he did not have the consent of Mr A's heirs, he could not justify withdrawing the money under Rule 20.1(f) i.e. because he did not have the client's instructions. The Respondent disagreed; the client was Chandlers, not Mr A. The Respondent told the Tribunal that he had the authority of Chandlers to withdraw the money and told the Tribunal that Babbé's bills had authorised payment to them from client account.

164. The Tribunal asked the Respondent whose money he thought the £66,000 was at the point when he was trying to close the Firm. The Respondent told the Tribunal he did not know, so he had applied to the Applicant (in March 2014); the Applicant asked him to investigate and had itself written to Mr Miller. The Tribunal asked why, if Mr P was the client, and given that he had solicitors assisting him, the Respondent had not transferred the money to Babbé for that firm to sort out. The Respondent told the Tribunal that this was a good question, to which he did not know the answer. In response to a request to answer the question, the Respondent told the Tribunal that Babbé did not want to be bothered but he did not know why the money had not been sent to Babbé. The Tribunal asked why the Respondent had not given the money back to Mr P, if he was the client. The Respondent told the Tribunal that Mr P/ Babbé probably did not want the money or ask for it, presumably as they could not be bothered tracking down where it should go. The Tribunal noted that the Respondent had given evidence about the nightmare of closing down the Firm and asked why, in that situation, where Mr P represented the Firm's client the money had not been sent to Mr P (if the Respondent believed he was entitled to it). The Respondent told the Tribunal that it seemed to him that Mr P did not want it.

165. The Tribunal then retired for lunch, and resumed after about 35 minutes. On resuming, the Respondent told the Tribunal that he had had a chance to consider the questions put by the Tribunal. The Respondent referred to an email he sent to Mr P on 16 February 2015, which referred to a letter from solicitors who had been appointed to act for one of the administrators (of Mr A's estate) and that the

Respondent would make further enquiries of them. The Respondent referred to an email from Babbé dated 27 February 2015 which reported on their investigations and in particular that they had confirmed the charge over Mr A's property had been discharged. The Respondent told the Tribunal that it was not until 27 February 2015, when he received this email, that he had confirmation that no further money was due to Chandlers.

166. The Respondent told the Tribunal that he had then written to the solicitors who appeared to represent an heir or administrator of Mr A's estate, on 27 February 2015. That letter referred to an earlier communication and recorded, "You confirmed to me that you were not in a position to receive any funds until such time as you had obtained a Grant in the UK or reseal the Grant which was issued in Nigeria". A letter from those solicitors dated 4 September 2015 made it clear that there had not yet been a Grant in the UK. The Respondent told the Tribunal that this correspondence clarified that by 27 February 2015 it was established that no money was owed to Chandlers and the solicitors for the estate reported that they were not able to receive the money.

167. The cross examination of the Respondent then resumed.

168. The Respondent confirmed that he had met Mr P, with Babbé, on 11 February 2015 and that he had relied on Mr P's authority. The Respondent confirmed that he first met Mr P on 11 February 2015, although there had been some email communication before then. The Respondent confirmed that the note of the meeting which he prepared was accurate. It was put to the Respondent that the note indicated that there was no longer a charge in favour of Chandlers and that Chandlers had all of the money due to them, but they were checking the position. The Respondent agreed this, and that on 27 February 2015 Babbé confirmed that no further money was due. The Respondent accepted that at that point he knew that the money was due to Mr A's heirs.

169. The Respondent agreed that in the period June 2014 to February 2015 there had been a working hypothesis that at least some of the money held on the Chandlers/Mr A ledger might be due to someone other than Chandlers.

170. The Respondent was referred to the part of his note of the 11 February 2015 meeting which read, "[Mr P] asked me if I considered it reasonable to cover his fees and that of his lawyers… and I confirmed that I considered that request to be reasonable". It was put to the Respondent that this showed Mr P was asking the Respondent for payment, not telling him to pay. The Respondent accepted this. It was put to the Respondent that he must have realised that Mr P did not have authority to say what the Respondent should do with the money. The Respondent accepted this could appear to be the case, but Babbé had also sent invoices, which the Respondent had taken as confirmation in writing that the withdrawals could be made. The Respondent told the Tribunal that he had not told Babbé to write their invoices as they had. It was put to the Respondent that the invoices were sent as the Respondent had said it was reasonable for their fees to be covered. The Respondent told the Tribunal that Babbé, an established firm in Guernsey, had presumably taken the view that rendering the bills was a proper thing to do. It was put to the Respondent that it was clear that Mr P had been looking to the Respondent to advise whether the payments could be made.

The Respondent told the Tribunal that Mr P had his own, independent, lawyers to advise him; they had suggested it was reasonable to be paid from the client account. The Respondent confirmed that he relied on the wording on the invoices, which referred to payment being made from client account. The Respondent told the Tribunal that this authority referred to the Babbé bills, and his own.

171. The Respondent was referred to a handwritten note prepared by Mr Coe and annexed to his witness statement, in which it was recorded that Mr Coe had a telephone discussion with Mr P on 19 February 2015. The note included, "[Mr P] thinks Chandlers have had their fees, wants to be sure. Told him we need to pay him and Babbé. He said Babbé would need paying. He was thinking (about) not charging. Told him he should charge; it was only reasonable…" The Respondent told the Tribunal that Mr Coe may have relayed that conversation to him, but he was not party to the conversation and it might be twisting matters to say that Mr Coe told Mr P he should be paid, rather than Mr P asking to be paid. The Respondent thought that Mr P had been paid something. Presumably, he had been advised by Babbé that it was proper to charge. It was put to the Respondent that Mr Coe's note about the amount of work which had been done recorded that Mr P acknowledged that work had been done, but was not purporting to authorise a payment of costs. The Respondent accepted that. It was put to the Respondent that, at its highest, there had been no objection by Mr P/ Babbé to the Respondent's costs. The Respondent told the Tribunal that it could be twisted that way. It was put to the Respondent that Mr P had no objection to the costs as he had no interest in the money, and that significant sums had been withdrawn before the Respondent had met Mr P. The Respondent told the Tribunal that he had delivered bills to Chandlers Ltd and had been open in doing so. The Respondent accepted that at that point he had not had the authority of Chandlers to withdraw money, but he had delivered bills; he had thought that was the right thing to do. The Respondent told the Tribunal that a bill dated 1 August 2014 had been sent to Mr C of Chandlers Ltd on or about that date, with a further copy being sent on 17 November 2014.

172. It was put to the Respondent that the honest thing to do, if he wanted to withdraw money from the Chandlers/Mr A ledger, would to be ask the person to whom the money belonged for permission. The Respondent told the Tribunal that that would be so in an ideal world. It had appeared that Mr C and Chandlers Ltd had been the successor to Chandlers. The Respondent had sent the invoice to Mr C, whom he had believed to be the client. The Respondent accepted that by 27 February 2015 he knew that the money held on the account belonged to the heirs of Mr A. The Respondent denied that there was any need to repay money to the client ledger, as he had been authorised by Chandlers to take the money; work had been done for Chandlers, and bills had been sent.

173. The Respondent accepted that his Practising Certificate had been revoked on 12 December 2014 but he did not know he was not authorised to practise as a solicitor. The Respondent accepted that he had been held out as a solicitor after that date, in connection with the investigation into the Chandlers/Mr A matter.

174. The Respondent accepted that he had a duty to respond to correspondence from the Applicant. The Respondent did not accept that he had failed to discharge that duty, as he had told the Applicant what he was doing with regard to Chandlers/Mr A.

175. The Respondent referred to the SRA Handbook Glossary (2014) in which it was stated,

> "**Solicitor** means a person who has been admitted as a solicitor of the Senior Courts of England and Wales and whose name is on the roll kept by the Society under section 6 of the SA, save that in the SRA Indemnity Insurance Rules includes a person who practises as a solicitor whether or not he or she has in force a practising certificate, and also includes practice under home title of a former REL who has become a solicitor."

The Respondent drew to the attention of the Tribunal that the definition applied whether or not a person held a Practising Certificate. The Respondent told the Tribunal that he had carried out proper enquiries, authorised by the Applicant, e.g. Land Registry searches, placing advertisements etc. The Respondent told the Tribunal that he carried out this work in good faith. The Respondent referred to a letter from Mr Johnson dated 11 February 2015 which referred to temporarily re-opening his file on this matter in the light of the Respondent's letter of 27 January 2015, and stated that Mr Johnson had been writing to him as a solicitor at the Firm. The correspondence had only been about the Chandlers/Mr A matter.

176. The Respondent accepted that the Applicant had not told the Respondent to describe himself as a solicitor, and accepted that it might be the case that using the title "solicitor" implied that one was entitled to practise. The Respondent told the Tribunal that in his letters it was stated that the Firm had ceased to practise, and that he had not held himself out to the public as a solicitor. The Respondent's dealings had been with solicitors in Guernsey; he was not trying to dupe them, but was concerned with money-laundering provisions and the like. The Respondent accepted that using the phrase, "professional charges" on the invoices might connote work done by a solicitor in practise. The Respondent told the Tribunal that he had told Babbé that the Firm had ceased practise.

Mrs Anderson

177. The Tribunal noted that the witness statement of Mrs Anderson dated 23 December 2015 dealt with matters concerning the effect of these proceedings on her and on the Respondent, with only one paragraph dealing expressly with the ownership of the Flat and related matters. The Tribunal informed the Respondent that it had read the statement. Whilst it appreciated that the proceedings were stressful for Mrs Anderson, and that she believed that there had been some sort of vendetta by the Applicant against the Respondent, the Tribunal had to deal with the issues in the allegations; other matters would not be relevant to whether or not the allegations were proved.

178. The Tribunal directed that Mrs Anderson should not refer to a handwritten document which she brought into the witness box, which appeared to set out a number of headings. The Tribunal confirmed that Mrs Anderson should answer the questions put to her by the Respondent, the Applicant and the Tribunal.

179. Mrs Irene Anderson then gave evidence on behalf of the Respondent. She confirmed that the contents of her witness statement in these proceedings dated 23 December 2015 were true to the best of her knowledge and belief and adopted and confirmed as true a witness statement she made in County Court proceedings in Croydon under matter number 2CRO1665 on 22 February 2015.

180. Mrs Anderson told the Tribunal about the purchase of the Flat. Mrs Anderson told the Tribunal that she paid a £1,500 reservation deposit in January 2006, on her credit card, and made further payments of the deposit over the following two years; Mrs Anderson told the Tribunal that she had funded those payments. The purchase of the Flat had completed in May 2008. As mortgages had been difficult to obtain, the mortgage adviser had advised that the Respondent should be joined onto the mortgage; otherwise, she would have lost her deposit and possibly been sued for failing to complete. The mortgage was an interest only mortgage. Mrs Anderson told the Tribunal about her financial circumstances and her interest in improving her pension provision.

181. Mrs Anderson told the Tribunal that in January 2006 she had intended to buy the Flat jointly with the Respondent but he did not have the money as time went on and the purchase was all funded by Mrs Anderson. Mrs Anderson told the Tribunal that she had not wanted to lose her deposit. She and the Respondent had never lived in the Flat. It was intended that the rental income would cover the mortgage payments and service charges on the Flat. Mrs Anderson told the Tribunal about difficulties there had been with the first letting agents, who had disappeared with the deposit and rent. After that, in order to reassure the tenants, it was arranged that the rent would be paid to the Firm, until another letting agent was found. Mrs Anderson told the Tribunal that since 2008 she had been responsible for maintenance and furnishing the Flat and payment of the service charges. On completion, she had paid the Stamp Duty Land Tax on the purchase price of £275,000, and paid the tax on the rental income.

182. Mrs Anderson was then cross examined by the Applicant.

183. Mrs Anderson confirmed that there had been no findings by the Court in the Croydon County Court proceedings; the proceedings had been discontinued by the Claimant and the charging order which had been obtained on the Flat was discharged.

184. Mrs Anderson told the Tribunal that the tenants had paid the rent into the Firm for a few months. When she found new agents, the tenants paid the agents and then the agents paid the rent into her bank account. Mrs Anderson told the Tribunal that the payments into the Firm were to give the tenants assurance that their deposit and rental payments were secure. The rent had always been enough to pay the mortgage and service charges; as interest rates reduced, a small profit was made. Mrs Anderson accepted that the purchase was completed with a mortgage of 70% of the purchase price, which mortgage was in the joint names of herself and the Respondent. Mrs Anderson told the Tribunal that the Respondent had been joined into the mortgage for added security, and that she could not have obtained the mortgage without this. Mrs Anderson told the Tribunal that the Respondent had not put any money into the purchase of the Flat, although he had incurred a debt to the bank. Mrs Anderson accepted that, legally, the bank could go after the Respondent for

payment. Mrs Anderson accepted that it could be the case that the Respondent had contributed 35% of the purchase price, as he was jointly responsible for the 70% loan.

185. Mrs Anderson told the Tribunal that she had not previously seen the document in which it appeared that a service charge bill appeared in a list of the Respondent's personal liabilities. Mrs Anderson accepted this bill was from the management company for the block in which the Flat was situated. Mrs Anderson told the Tribunal that she had paid the service charge from the rental income and it could be that the Respondent had picked up a copy of the bill at home.

186. Mrs Anderson was referred to paragraph 15 of her witness statement in the Croydon County Court proceedings, which read,

> "[The Respondent] has never once said to me, or claimed, that he has a financial interest in this project; we have never had a conversation concerning a claim for a financial interest in… any other property which I own…"

Mrs Anderson told the Tribunal that she and the Respondent had never had a discussion about the ownership of the Flat. Mrs Anderson told the Tribunal about the circumstances in which she and the Respondent had married and that she trusted him. Mrs Anderson told the Tribunal that the Respondent had always said the Flat was hers, although they had originally planned to buy it together.

Other

187. The witness statement of Mr Stephen Guest, made in proceedings in the County Court at Croydon (case number 2CRO1665) ("the Croydon County Court proceedings"), dated 9 February 2015, was not challenged by the Applicant and was read by the Tribunal. The statement was accorded the weight it would have had the witness attended in person.

188. Mr Guest, who was a mortgage broker, set out in his statement his dealings with Mrs Anderson in arranging mortgages, including in relation to the Flat. This mortgage was described in his statement as a "buy to let" mortgage on an interest only basis and that he had explained to Mrs Anderson that to facilitate the issue of the mortgage, the additional covenant of the Respondent was required. Mr Guest also stated that Mrs Anderson had paid the 30% deposit on the Flat from her own funds, and by raising a mortgage on another property.

189. The Respondent had filed and served a witness statement made by Mr Coe in these proceedings on 12 December 2015. This dealt with the Chandlers/Mr A matter. The Respondent did not specifically rely on this in his presentation of his case. The Tribunal read the statement but accorded it little weight, save where supported by other evidence.

Findings of Fact and Law

190. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal noted that the Respondent denied all of the allegations made against him in these proceedings.

191. The Tribunal found that the Respondent was intelligent and articulate. He had been well able to present his arguments and evidence. The Respondent was familiar with the case and able to address the issues raised by the allegations in a clear and thorough manner. The Tribunal had taken care to ensure that breaks could be taken in the hearing for the Respondent's convenience, and that the Respondent had had sufficient time to present his evidence and arguments. The Tribunal was satisfied that in all respects the Respondent had had a fair hearing.

192. **Allegation 1.1 - He failed to make full and/or accurate disclosure of his assets in a Proposal to Creditors for an Individual Voluntary Arrangement ("IVA"), in breach of Principles 2 and 6 of the SRA Principles 2011 ("the Principles")**

192.1 The factual background to this allegation is set out at paragraphs 83 to 90 above.

192.2 The Applicant submitted that IVAs were an insolvency process which would avoid the debtor's bankruptcy if approved by the creditors. It was submitted that creditors needed enough information to enable them to make an informed decision on whether or not to accept the proposal.

192.3 The Respondent's position was that there was no reason to disclose the fact that the Flat was registered in the joint names of himself and Mrs Anderson as he had no interest in it as, on his case, he held the Flat 100% as trustee for Mrs Anderson.

192.4 The Applicant submitted that the Respondent was an experienced conveyancer. There was no declaration of trust. The Applicant did not accept that the Respondent had no beneficial interest in the Flat and, in any event, as it was sufficiently arguable that he had an interest the Respondent should have disclosed the Flat, even if he asserted he had no interest in it.

192.5 The Applicant referred the Tribunal to the case of Stack v Dowden [2007] 2 AC 432 ("Stack v Dowden"), and in particular paragraphs 33-34 of the Judgment of Walker LJ, and paragraphs 56 to 59 in the Judgment of Hale LJ. The Applicant also referred to the case of Jones v Kernott [2012] 1 AC 776 ("Jones"), and in particular paragraphs 10 to 12 and 19 in the Judgment of Walker and Hale LLJ and paragraph 60 in the Judgment of Collins LJ. These passages are not quoted in this Judgment. The Tribunal was also referred to an extract from Megarry and Wade on The Law of Real Property (8th edition, 2012), which contained a summary of the legal position on which the Applicant relied. At paragraph 11-030, in relation to situations in which legal title was held jointly, there was reference to Stack v Dowden and Jones as cases in which the parties were joint registered proprietors,

> "holding the land (as they must) as joint tenants at law but in some undeclared manner. Of course, in many cases of joint legal ownership, the nature and extent of beneficial interests will have been declared at the time of purchase, either in the trust instrument, by separate written agreement or as a consequence of completion of Land Registry forms at the time of registration. This will be conclusive."

The text went on to set out the principles which would apply where the equitable ownership was not expressly declared and in particular:

i) "Equity follows the law" and thus, absent some special circumstances, the parties are taken as joint tenants in equity. This was stated to be a presumption which was not lightly to be dismissed.

ii) The presumption could be displaced by showing that the parties had a different common intention when the property was first acquired or that they formed a different common intention at a later date.

iii) This displacing common intention may be express, inferred ("deduced objectively from their conduct") or imputed (where there was no "direct evidence or by inference what their actual intention was as to the shares".

192.6 The Applicant submitted that the presumption that the beneficial ownership of the Flat followed the legal ownership, and that the Flat was owned beneficially in equal shares, would only be displaced in exceptional circumstances; there were no such exceptional circumstances in this case.

192.7 The Applicant submitted that the Respondent's witness statement of 2 February 2015 in the Croydon County Court proceedings confirmed stated that, "It was the intention that [Mrs Anderson] and I would purchase [the Flat] jointly as an investment and a pension". Mr Coe's statement in the same proceedings dated 20 February 2015 also stated that there had been an intention to purchase the Flat jointly, but because of the recession the Respondent had been unable to contribute financially.

192.8 The Applicant submitted that it was accepted that Mrs Anderson paid the deposit of 30% for the Flat from her own resources. The remainder of the purchase price, 70%, was provided by an interest-only mortgage in the joint names of the Respondent and Mrs Anderson. It was submitted, therefore, that the Respondent had an obligation, jointly with Mrs Anderson, to repay the interest and capital on the mortgage (at the end of the term).

192.9 The Applicant also submitted that the evidence showed that the rent was paid by the tenants of the Flat into the Firm, of which the Respondent was the sole equity partner. Mrs Anderson's witness statement in the Croydon County Court proceedings dated 22 February 2015 referred to the rent being paid directly to the Firm. It appeared to be uncontroversial that the mortgage interest payments, service charge etc. were paid from the rental income.

192.10 The Applicant referred to the schedule of creditors annexed to the Respondent's IVA Proposal in February 2014. This included debt of £503.83 where the creditor was "Oxygen Property Management"; it was accepted that this was the management company for the development in which the Flat was situated. The Applicant submitted that this suggested the Respondent had a liability to pay this charge in relation to the Flat.

192.11 The Applicant further submitted that as an experienced conveyancer, the Respondent would have been aware that a declaration of trust would be appropriate if it was intended that Mrs Anderson would have the sole beneficial ownership of the Flat. The purchase of the Flat was completed after the decision in Stack v Dowden and that the Respondent would have been aware of this decision. The Applicant submitted that there was no realistic prospect of displacing the Stack v Dowden presumption that the beneficial ownership followed the legal ownership.

192.12 The Applicant submitted that the Croydon County Court proceedings did not assist the Respondent as there had been no determination in those proceedings as to the beneficial ownership of the Flat; the proceedings had been discontinued, as confirmed by an order dated 20 July 2015.

192.13 The Applicant submitted that it was not necessary for the Tribunal to reach a firm conclusion on the issue of beneficial ownership of the Flat; it was sufficient to find that disclosure of the Flat was required if there was room for argument on the issue as in those circumstances the creditors should have been given complete information in order to make an informed decision on the IVA Proposal. The burden of proving that the Respondent had no beneficial interest in the Flat would rest on him. The creditors would clearly want to know about this potentially substantial asset. Even if the Respondent genuinely believed he had no interest in the Flat, because of the presumption in favour of the Flat being jointly owned beneficially, it was wrong of the Respondent unilaterally to choose to withhold information about the Flat.

192.14 The Respondent submitted that he relied on the cases of to Stack v Dowden and Jones, together with the Snoddon case. The Respondent submitted that the first two of these cases related to properties which had been occupied by the parties as a home, whereas the Flat was a buy to let property, so the present case could be distinguished. The Respondent noted that in Stack v Dowden both parties had contributed to the purchase price. There was a distinction between legal and beneficial ownership. The Respondent submitted that where, as in the present instance, there was an arm's length transaction which suggested there would be a resulting trust, with the interests dependant on the amount contributed to the amount contributed to the purchase price. The Stack v Dowden case made it clear that the presumption that the beneficial ownership followed the legal ownership was a presumption which could be displaced. The Respondent referred to the Judgment of Hope LJ in Stack v Dowden, in which it was stated,

> "… the contributions which they made to the purchase of that property were not equal. The relative extent of those contributions provides the best guide as to where their beneficial interests lay, in the absence of compelling evidence that by the end of the relationship they did indeed intend to share the beneficial interests equally".

192.15 In considering the common intention of the parties, that intention could be inferred from their whole course of dealings. In the Judgment of Walker LJ, it was noted that a common intention trust could be inferred even where there was no evidence of an actual agreement. In the Judgment of Hale LJ there was reference to the whole course of dealings between the parties including the arrangements they made to pay outgoings. The Judgment of Neuberger LJ expressed the view that the beneficial interest of each party would be in proportion to the extent of each party's contributions to the purchase price – the "resulting trust" solution. That same Judgment also included at page 474 the view that, "The fact that the parties keep assets such as bank accounts … separate and in separate names could be said to indicate that the parties do not intend to pool their resources".

192.16 The Respondent went on to refer to the case of Jones, in which it was noted by Walker and Hale LLJ that the common intention of the parties could change over time – the "ambulatory" constructive trust. It was also stated, "The presumption is that the parties intended a joint tenancy both in law and in equity. But that presumption can of course be rebutted by evidence of a contrary intention, which may more readily be shown where the parties did not share their financial resources." The Respondent referred to further passages on ascertaining the actual intentions of the parties, in the light of the whole course of conduct between the parties.

192.17 The Respondent referred to the case of Snoddon, where the property had been in the sole name of the partner of a bankrupt. The registered proprietor had argued that the only reason the property was put into joint names was to enable her to change mortgage provider. It had been argued that there was no common intention for the bankrupt to have an interest in her house. In that case, the Court determined that the bankrupt had no interest; there had been no common intention to have a joint beneficial interest in the property and the usual presumption had been rebutted.

192.18 The Respondent submitted that with regard to the Flat: all the capital was paid by Mrs Anderson and none by the Respondent; the mortgage was an interest-only mortgage under which no capital payments were made; there had been no common intention to own the property jointly; all taxes due in relation to the Flat, including SDLT, had been paid by Mrs Anderson together with the cost of repairs and furnishing; it was a buy to let property, rather than a home, which was held as tenants in common; as it had not been a matrimonial home, there would be no equitable occupation rights. The Respondent submitted that he had relied on paragraph 7 of the IVA Proposal and that he had shown there was evidence that Mrs Anderson made the full contribution to the costs of the Flat, and had a 100% beneficial interest. The Respondent submitted that he had not been dishonest.

The Tribunal's Findings

192.19 The Tribunal considered carefully the evidence and the submissions of the parties. The Tribunal noted that its jurisdiction did not include making any binding findings about whether or not the Respondent had a beneficial interest in the Flat; such arguments could only be determined by a civil court. The Tribunal's task was to consider the allegation made and whether, in the circumstances presented, the Respondent should have disclosed that he was a legal joint owner of the Flat.

192.20 Many of the facts in the matter were undisputed. The Tribunal could therefore find with certainty that the undisputed facts included:

192.20.1 The Flat was purchased in May 2008 for £275,000 and was registered in the joint names of the Respondent and Mrs Anderson;

192.20.2 There was no declaration of trust in relation to the ownership of the Flat, and nor was there anything on the documents submitted to the Land Registry on completion to indicate how the property was to be held in equity;

192.20.3 The reservation deposit for the Flat was £1,500 and was paid by Mrs Anderson in January 2006, whilst the property was being developed;

192.20.4 The purchase was originally intended to be a joint purchase, to which both the Respondent and Mrs Anderson would contribute;

192.20.5 In practice, Mrs Anderson paid the outgoings on the Flat including all taxes due, the service charges and the costs of furnishing and repairs;

192.20.6 The total deposit of 30% of the purchase price was paid by Mrs Anderson, in instalments from 2006 to 2008;

192.20.7 The remaining 70% of the purchase price was paid with an interest-only mortgage, which was in the joint names of Mrs Anderson and the Respondent;

192.20.8 In November 2013, the Respondent submitted a statement to the High Court in which he referred to the Flat, stating "[The Respondent] and his wife together own a second flat in London valued at approximately £300,000 with a mortgage of approximately £195,000".

192.20.9 In February 2014 the Respondent submitted an IVA Proposal in which the Flat was not listed on the schedule of assets;

192.20.10 On becoming aware that the Respondent was a joint legal owner of the Flat, the Insolvency Practitioners instructed in relation to the IVA Proposal, whose notepaper indicated that they were authorised to act by The Insolvency Practitioners Association, withdrew their support from the Proposal and cancelled the planned meeting of creditors.

192.21 The Respondent's primary contention was that he did not have any beneficial interest in the Flat so it would not form part of his estate in bankruptcy. The Respondent submitted that paragraph 7 of the IVA Proposal meant that he only had to disclose assets which would form part of his estate in bankruptcy.

192.22 In order to examine this contention, the Tribunal considered the arguments put forward by the parties on the beneficial ownership of the Flat. These arguments are set out at some length above, and are not repeated here.

192.23 The Tribunal noted that the Respondent had accepted that the cases of Stack v Dowden and Jones dealt with the general principles of trusts in relation to the ownership of property. Those general principles applied to the buy to let situation as much as to a property occupied as a home by the parties. The Tribunal noted that the Applicant had submitted that it may be easier to rebut the presumption in favour of equitable joint ownership, where there was legal joint ownership, in the present situation than where the property in question had been a home. The Tribunal noted that it was clear from the two leading cases that the first step was to establish if there was any beneficial interest at all and, if so, the extent of that interest. The Stack v Dowden case was one in which it was agreed both parties had a beneficial interest and the issue in that case had been the quantification of that interest. What was clearly established was that there was a presumption that the beneficial interest followed the legal interest, although that presumption was rebuttable, in particular by examining the intentions of the parties as demonstrated by the whole course of conduct between them.

192.24 The Tribunal noted that the evidence of the Respondent and Mrs Anderson was that they kept their financial affairs separate; for example, they did not have a joint bank account. The Tribunal noted the Respondent's reference to Neuberger LJ's Judgment from page 474 in the Stack v Dowden judgment (see paragraph 192.15 above) and that the passage went on to say, "But it could equally be said that the fact that they choose, exceptionally, to acquire the home in joint names indicates that it is to be treated differently from their other assets, namely that it is to be jointly owned beneficially…"

192.25 The Tribunal noted and found that the Respondent, who was a very experienced conveyancer, had not made any declaration of trust either at the time of purchase or subsequently and had not ensured that the conveyancing documents reflected what he now said the equitable position was. There was no clear documentary record of a trust so the presumption was that both legal owners would have a beneficial interest in the Flat. The Tribunal found the Respondent's evidence concerning Mr Coe's lack of competence to be extraordinary, given that the Respondent had been in partnership with Mr Coe for about 20 years. It was also extraordinary that the Respondent had missed the opportunity to declare a trust in the lease documentation submitted to the Land Registry. The Tribunal found the Respondent's evidence on these points to lack credibility.

192.26 There had been no determination by a Court that the Respondent had no interest in the Flat. Indeed, a document submitted to the High Court just three months before the IVA Proposal strongly suggested that the Respondent had an interest in the Flat. The Tribunal found that the Respondent's explanation for the High Court statement and the IVA Proposal being so different was far from satisfactory; he had chosen to disclose it in the High Court matter but concealed it in the IVA Proposal.

192.27 The Tribunal noted that the Respondent appeared unable to accept that 70% of the capital provided to buy the Flat came from a loan which was in the joint names of himself and Mrs Anderson. Mrs Anderson had accepted that she would not have been able to proceed with the purchase if the Respondent had not been a joint mortgagor. It was beyond any doubt that the Respondent was jointly liable, with Mrs Anderson, to repay the capital at the end of the term or on the sale of the Flat.

192.28 The Tribunal was satisfied that it was entirely appropriate for the Insolvency Practitioners to withdraw their support for the IVA Proposal when they learned that the Respondent was registered as a joint owner of the Flat.

192.29 The Tribunal did not determine whether or not the Respondent had an interest in the Flat. However, the fact that so much argument was needed on the point indicated that the Respondent could not show, easily and clearly, that he had no interest in the Flat. The Respondent had accepted that the burden would be on him to prove that he had no interest in the Flat, should the point be argued in Court, as the presumption was that he had an interest.

192.30 The Tribunal was satisfied, as a matter of fact, that the Respondent should have disclosed in the IVA Proposal that he was a joint legal owner of the Flat. Failing to do so deprived the creditors of the opportunity to investigate or consider whether or not this asset should form part of the IVA Proposal assets. It would have been open to the Respondent to insert a statement to the effect that he had no interest in the asset, although he would be shown as the joint legal owner. Instead of disclosing the Flat, whether or not he asserted that Mrs Anderson had the entire beneficial interest, the Respondent had unilaterally decided to deprive the creditors of some potentially very important information. It was not for the Respondent to decide conclusively that he had no interest in the Flat. Given the lack of a declaration of trust, such a point may have had to be argued in Court or explored fully by the creditors.

192.31 The Tribunal noted and accepted that the IVA regime depends on creditors being able to rely on the accuracy and completeness of the information they are given by debtors. Further, the creditors should have been able to rely on information given by a solicitor; in this case the information was incomplete and misleading. The Respondent should have disclosed the Flat to allow the creditors to consider whether or not he had any interest in the Flat.

192.32 The Respondent had failed to give full and accurate information about his assets in the IVA Proposal. This was an important document, in which accuracy and completeness were essential to enable creditors to determine if there would be a better outcome by approving the IVA or by pursuing a bankruptcy petition. According to the November 2013 High Court document, the net value of the asset was around £105,000; it was therefore significant and far from trivial.

192.33 The Tribunal noted that there was no clear definition of "integrity" in the Principles or in the case law. However, it was something which the Tribunal was experienced in recognising. To display integrity, a solicitor in this situation would be open and transparent about the assets which appeared to be in his name and would give an explanation if he asserted that he had no beneficial interest or held those assets as a bare trustee. In failing to disclose the Flat, the Respondent's conduct lacked integrity and was such as would tend to diminish the trust the public would place in him and the provision of legal services. The public would expect a solicitor to be frank and open in these circumstances. The Tribunal was satisfied that this allegation had been proved to the highest standard.

193. **Allegation 1.2 - He attempted to take unfair advantage of third parties, namely his creditors, by failing to provide them with all material necessary to enable them to make an informed decision regarding his IVA Proposal, in breach of Principles 2 and 6 of the Principles. It was further alleged that he thereby failed to achieve Outcome 11.1 of the Solicitors Code of Conduct 2011 ("the 2011 Code").**

193.1 The factual background to this allegation is set out at paragraphs 83 to 90 above.

193.2 The main findings of fact relating to this allegation are set out at paragraphs 192.19 to 192.33 above, and the submissions of the parties are recorded in relation to allegation 1.1.

193.3 Outcome 11.1 of the 2011 Code requires that solicitors must not take unfair advantage of third parties in either their professional or personal capacity.

193.4 For the reasons set out above, the Tribunal was satisfied to the highest standard that the Respondent had failed to provide his creditors with all the material necessary to enable them to make an informed decision regarding his IVA Proposal. More specifically, he had failed to disclose an asset in which there was potential equity of around £105,000 (according to the document submitted to the High Court in November 2013); this was potentially a significant asset. As already noted, the creditors should have had the opportunity to consider the Respondent's assertion that he had no beneficial interest in the Flat. He had deprived them of that opportunity.

193.5 The Tribunal noted that, quite properly, the IVA Proposal had been withdrawn before it was implemented. The Respondent had, however, attempted to proceed with his IVA on the basis of incomplete and inaccurate disclosure of his assets (or possible assets).

193.6 The Tribunal noted that a degree of deliberation had to be established where there was an accusation of attempting to take unfair advantage; it would not be sufficient if there had been some inadvertent or accidental conduct. In this instance, the Tribunal was satisfied that the Respondent had acted with deliberation. He had sought the IVA and was well aware of the need to give complete information, and that failure to do so may result in creditors being misled or taken advantage of, in that they would not have the opportunity to question the Respondent about the ownership of the Flat.

193.7 For the same reasons as those on which allegation 1.1. was proved, the Tribunal was satisfied that the Respondent had acted without integrity and in a way which would diminish the trust placed in the Respondent and in the provision of legal services. He had clearly failed to achieve Outcome 11.1 of the Code. The Tribunal was satisfied to the higher standard that the allegation had been proved in full.

194. **Allegation 1.3 - It was alleged that the Respondent's conduct in respect of allegation 1.1. was dishonest, although it was not necessary for the Tribunal to make a finding of dishonesty in order for allegation 1.1 itself to be proven.**

194.1 Again, the factual background to this allegation is set out at paragraphs 83 to 90 above. The core findings on the facts regarding the Respondent's conduct in relation to allegation 1.1 are set out at paragraphs 192.19 to 192.33. Allegation 1.1 had been proved.

194.2 The Applicant submitted that in considering the linked allegation of dishonesty the Tribunal should have regard to the case of Bryant v Law Society [2009] 1 WLR 163, which applied the test in Twinsectra v Yardley [2002] UKHL ("Twinsectra").

194.3 The Applicant submitted that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people and was aware that he was dishonest by those standards, in that he failed to declare in his IVA Proposal an asset which he knew he owned jointly with his wife, when he was aware that he was obliged to declare that asset. The Respondent knew at all times that he was the joint legal owner of the Flat, as demonstrated by the statement of means presented to the High Court in November 2013. Further, the Respondent was an experienced conveyancing solicitor and knew he owned the Flat and that he was bound to disclose his ownership. It was submitted that the failure to disclose his ownership in the context of the IVA Proposal was dishonest. If the Respondent had been acting honestly, he would have disclosed the existence of the Flat so that creditors could make further enquiries and consider the point.

194.4 The Applicant referred to the document filed in the High Court in November 2013, just a few months before the IVA Proposal, referred to at paragraph 90 above. The Respondent had explained that the statement to the High Court was correct with regard to the legal ownership, but he had omitted to refer to the beneficial ownership being 100% on trust for Mrs Anderson. The Applicant submitted that this explanation was not credible in the circumstances. The purpose of the statement to the High Court had been to provide information about the Respondent's means. The effect of the statement to the High Court, if the Respondent was correct about beneficial ownership, was that he had overstated the value of assets available by about £105,000 (the Flat being valued at about £300,000 and the mortgage at about £195,000). The Applicant submitted that an inaccuracy of that kind should have been drawn to the attention of the Respondent's then lawyers before authorising its presentation to the Court, or drawn to the attention of the Court if noted later.

194.5 The Respondent's submissions set out at paragraphs 192.14 to 192.18 above were also relevant to this allegation. The Respondent's position, in short, was that as he had no beneficial ownership of the Flat he was not required to disclose it in the IVA Proposal.

194.6 The Tribunal was satisfied so that it was sure that failing to list the Flat on the schedule of assets, where the Respondent was clearly a joint legal owner of the Flat, was dishonest by the ordinary standards of reasonable and honest people. The Respondent was aware of the importance of being truthful and frank in the IVA Proposal document, as the information in the Proposal was to enable creditors to determine if the proposed IVA would give them a better outcome than the Respondent's bankruptcy. It was not for the Respondent unilaterally to decide to exclude from the Proposal the fact that he jointly owned a Flat, with a net value of around £105,000. A reasonable and honest person would expect a solicitor in the

Respondent's position to declare the asset, and (if he asserted he had no beneficial interest in it) what he said about the beneficial ownership.

194.7 The Tribunal was satisfied that the Respondent had taken advantage of third parties, i.e. the creditors. He had submitted a document to the High Court just three months before the IVA Proposal which listed the Flat as an asset, without any qualification to the effect that he had no beneficial interest in it. The Tribunal noted that the insolvency practitioners had believed they had been misled and so had withdrawn their support for the proposed IVA

194.8 In all of the circumstances, including those set out in relation to allegation 1.1 above, the Tribunal was satisfied to the highest standard that the Respondent realised that his conduct was dishonest by the ordinary standards of reasonable and honest people. He was well aware that he was a joint legal owner of the Flat, that the document he was completing required him to provide information about his assets (for consideration by the creditors) and that he had submitted a document to the High Court in which it was indicated he was a joint beneficial as well as legal owner. The Respondent realised that he should have disclosed the true legal position, even if he then argued that he had no beneficial ownership of the Flat.

194.9 The Tribunal was satisfied to the highest standard that the Respondent had acted dishonestly in failing to disclose the Flat in the IVA Proposal, and that both limbs of the Twinsectra test had been satisfied.

195. **Allegation 2.1 - He withdrew money from a residual client balance in respect of time costs and expenses that he claimed to have incurred while investigating the ownership of that residual balance, when he had no authority from either the relevant client or the SRA for doing so. The withdrawals were therefore made in breach of Rule 17.2 and Rule 20 of the SRA Accounts Rules 2011 ("AR 2011"), and he acted without integrity in breach of Principle 2 of the Principles and in a way that undermined public trust in the legal profession in breach of Principle 6.**

195.1 The factual background to this allegation is set out at paragraphs 82 and 91 to 110 above.

195.2 The relevant parts of the AR 2011 were referred to extensively in regard to this allegation. The Tribunal noted and found that Rule 17.2 of the AR 2011 provided:

> "If *you* properly require payment of *your fees* from money held for a *client* or *trust* in a *client account*, *you* must first give or send a bill of *costs*, or other written notification of the *costs* incurred, to the *client* or the paying party."

195.3 The Applicant submitted that this was not a case in which the Respondent could "properly require payment" of his fees, as there was no agreement between him and the paying party (the estate of Mr A) as to the payment of fees. The Respondent contended that he could require payment of his fees from the Chandlers/Mr A ledger as he had sent his bills to the client, in the form of Mr P, formerly of Chandlers.

195.4 The Tribunal noted and found that Rule 20.1 AR 2011 provided:

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

(a) properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);

(b) properly required for a payment in the execution of a particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;

(c) properly required for payment of a *disbursement* on behalf of the *client* or *trust*;

(d) properly required in full or partial reimbursement of money spent by *you* on behalf of the *client* or *trust*;

(e) transferred to another *client account*;

(f) withdrawn on the *client's* instructions, provided the instructions are for the *client's* convenience and are given in writing, or are given by other means and confirmed by *you* to the *client* in writing;

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

(h) a refund to *you* of an advance no longer required to fund a payment on behalf of a *client* or *trust* (see Rule 14.2(b));

(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong *separate designated client account*) - see Rule 20.5 below;

(j) money not covered by (a) to (i) above, where *you* comply with the conditions set out in Rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the *SRA*. The *SRA* may impose a condition that *you* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

195.5 Rule 20.2 AR 2011 provided:

"A withdrawal of *client money* under rule 20.1(j) above may be made only where the amount held does not exceed £500 in relation to any one individual *client* or *trust* matter and *you*:

(a) establish the identity of the owner of the money, or make reasonable attempts to do so;

(b) make adequate attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable

costs of doing so are likely to be excessive in relation to the amount held;

(c) pay the funds to a charity;

(d) record the steps taken in accordance with Rule 20.2(a)-(c) above and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with Rule 29.16 and 29.17(a); and

(e) keep a central register in accordance with Rule 29.22."

195.6 The Applicant submitted that the effect of the AR 2011 was that the consent of the client or the person who owned the money/was entitled to it was obtained. The relevant person to give authorisation, or to whom any bill or written notification of costs should have been given was the representative of Mr A's estate or Mr A's beneficiaries as they were the paying party; the money belonged to them. Mr Allen submitted that it was not sufficient to send bills to Chandlers or obtain authority from Mr P, on behalf of Chandlers, as Mr P/Chandlers were not the paying parties. Further, it was submitted that this was not a situation in which payment of the Respondent's fees were properly required, as there was no agreement between the Respondent and the paying party concerning those fees; there has to be an agreement in place in order for fees to be charged.

195.7 The Applicant submitted that it was clear that the Applicant had not authorised the withdrawals from August 2014 to May 2015, and the Respondent had not suggested that he had had such authorisation.

195.8 The Applicant submitted that the Respondent's request to the Applicant under Rule 20.1 (k) indicated that he was well aware of the requirements of Rule 20.

195.9 It was accepted that when the Firm closed, the Respondent had little if any knowledge of the Chandlers/Mr A matter. However, on 18 June 2014 the Applicant informed the Respondent that the money was due to Mr A's heirs, in that Mr Miller's letter containing that information was forwarded to the Respondent. The Applicant submitted that the Respondent knew, or at least had strong grounds to believe, that the money held on the Firm's client account belonged to Mr A/his heirs and not to Chandlers. The Applicant submitted that it must follow that only Mr A's heirs could authorise withdrawals from client account, as it was their money. The Respondent had not suggested that he had any authority from the heirs of Mr A to make the withdrawals, but relied on his contact with Mr P/Chandlers, who had had no objection to the withdrawals. The Applicant submitted that the Respondent's reliance on Chandlers/Mr P was nonsensical; it was not possible for a former partner of Chandlers to authorise the Respondent to use money which they knew did not belong to Chandlers.

195.10 The Applicant referred to the note which the Respondent had prepared of the meeting on 11 February 2015 with Mr P and Babbé, as set out at paragraph 103 above. The Applicant submitted that the note recorded that Mr P had asked the Respondent if he "considered it reasonable to cover his fees and that of his lawyers… and I [i.e. the

Respondent] confirmed that I considered that request to be reasonable". The Applicant submitted that the fact that Mr P was asking the Respondent if he/his lawyers could be paid was inconsistent with the assertion that Mr P or the Respondent believed that Mr P/Chandlers were entitled to the money. If Mr P had believed that, he would have instructed the Respondent to release the monies. The Applicant submitted that this was strong evidence that the Respondent, and others, realised that any authority for release of money from client account should have come from the owner of the money. The Respondent had gone on to pay himself and Babbé.

195.11 The Applicant referred to a handwritten note prepared by Mr Coe, which was appended to Mr Coe's witness statement dated 12 December 2015; that statement had been produced on behalf of the Respondent. The note related to a telephone conversation between Mr Coe and Mr P on 19 February 2015 in which it was noted:

> "…He [Mr P] thinks Chandlers have had their fees, wants to be sure.
> Told him we need to pay him and Babbé. He said Babbé would need paying.
> He [Mr P] was thinking not charging. Told him he should charge, it was only reasonable…. "

The Applicant submitted that this indicated that Mr Coe, who was working with the Respondent on this matter, encouraged Mr P to claim money from the Firm's client account.

195.12 The Applicant's case was that none of the withdrawals were authorised. Even if the Tribunal accepted the Respondent's case that he could rely on Mr P's authority, the vast majority of the withdrawals occurred before that authority was given. The Applicant submitted that the Respondent's defence had not addressed the question of why money had been withdrawn long before the meeting with Mr P in February 2015. In any event, there was no clear documentary evidence of Chandlers/Mr P giving authority to the Respondent to make the withdrawals; indeed, that would be inconsistent with Mr P's request to the Respondent in respect of his fees and Babbé's.

195.13 The Respondent submitted that his conduct in regard to the Chandlers/Mr A matter involved a real and truthful attempt on his part to identify the client. The Respondent submitted that at all times his dealings had been transparent. In particular, he had delivered bills to those he believed were the correct parties to authorise payment. As at August 2014, that had been Mr C/Chandlers Ltd but later he had identified Mr P as the representative of Chandlers. Whilst the Respondent accepted responsibility, he had had assistance in this matter from another solicitor (Mr Coe) and the solicitors at Babbé had confirmed that it was correct and proper to deliver bills on this matter.

195.14 The Respondent submitted that his actions were open, not covert. In particular, weekly returns were submitted to the Applicant about the client balances which were held, and there had been no indication in any of the letters from the Applicant that he could not take costs or disbursements. The Respondent submitted that his bills had not been for his benefit alone, as there had been office expenses to meet.

The Tribunal's Findings

195.15 There was no dispute, and the Tribunal found, that the Respondent made the following withdrawals from client account on the Chandlers/Mr A client account:

195.15.1 £3,740, in respect of a bill dated 1 August 2014, which referred to the client as Chandlers and the matter as "Re: [Mr A]". The narrative read, "To professional charges in connection with the maintenance of the account in respect of the above including research, correspondence, instructing agents and general care and attention". The charges were £3,600, plus travel expenses of £140. It was not clear on the face of the bill to what the travel expenses related. The narrative on the ledger, against an office account debit of £140 on 18 August 2014 read, "JNL to travel expenses – staff (Croydon) transfer travel". It was understood that this was the bill referred to in a letter to Mr C of Chandlers Ltd dated 17 November 2014 in which there was reference to a further copy of the account dated 1 August 2014 being enclosed.

195.15.2 £5,507.50 in respect of a bill dated 18 December 2014. A copy of this invoice was produced by the Respondent in his bundle of documents for the hearing. This bill was addressed to Professor MIJ, who was described on the bill as the Administrator Ad Colligenda Bona re Mr A, deceased. The narrative to the bill read, "Investigation re beneficiaries in connection with the above named deceased estate between 2 August and 18 December including correspondence with Chandlers Limited, Mr JMBY, First Names including all emails, correspondence with agents, telephone attendances. Perusing lengthy correspondence. Preparing s27 Trustee Act 1925 Notice. Submitting same to London Gazette. Reporting to the SRA. Considering agent's reports, Guernsey Register and correspondence between [Professor J] and Mr JMBY". The bill was for £3,750, plus disbursements of £1,422 to PHC Law Consultancy Limited, £260 to a Guernsey agent and £75.50 advertising costs in the London Gazette. The Tribunal noted that the bill from PHC Law Consultants Limited (a company operated by Mr Coe) was dated 15 December 2014 and was for costs of £1,250 plus air fares of £172. That bill was expressed to be for the period from 23 June 2014 and was addressed to the estate of Mr A. The narrative included work done in instructing the agent in Guernsey, visiting Mr C's office and arranging to see him, meeting Mr C on 18 September 2014 and discussing succession to Chandlers, reporting to the Respondent and trying to trace Mr JMBY, whose letter from June 2009 gave some history of the matter. The transfer of the £5,507.50 had taken place in three tranches on 18 December 2014. The Respondent's bundle included the bill from the Guernsey agent for £260 and was headed "Re: [Mr A] deceased" and a copy of the cheque to the London Gazette for £75.50.

195.15.3 £691.50 paid to the Times Newspaper on 3 February 2015. A receipted invoice for that sum was within the Respondent's bundle of documents.

195.15.4 £258 for air fares to Guernsey, transferred on 3 February 2015.

195.15.5 £1,129.82 on 16 February 2015, described as "balance of disbursements as per bill". The disbursements on the bill dated 27 February 2015 totalled £2,179.02. (In fact, there was a discrepancy of £99.70 in the figures). The other disbursements included £415.65 for hotel costs and £470 in respect of "administration costs" incurred by Mrs Anderson and Mr Coe's wife.

195.15.6 £8,950 was transferred on 28 February 2015 in respect of a bill dated 27 February 2015. That bill, on notepaper which named "Anderson Solicitors", did not name the payee but included a reference and was headed, "Re: Chandlers – [Mr A]". The narrative read, "Professional charges in relation to the above matter to 27 February 2015" and was for £8,950 (plus disbursements totalling £2,179.02, as set out above).

195.15.7 £7,251 was transferred to Babbé on 28 February 2015, with the narrative on the ledger being "Babbé – fees due". This appeared to be the total of two bills. The first, for the period 22 January to 18 February 2015, was noted to be "payable by Messrs Coe and Anderson from client account monies held in relation to … property" and was for £4,755. The second, dated £2,496 was for the period 23 to 27 February 2015 and had the same wording as to who was to pay the bill. The bill was for £1,956 plus disbursements of £540.

195.15.8 £2,838.50 was transferred from the client account on 2 April 2015. The narrative on the ledger as "Babbé fees". The Tribunal noted that this transfer appeared to relate to an invoice dated 20 March 2015 from Mr P in the sum of £2,000, addressed to the Respondent care of Babbé. The narrative to the invoice stated it was "in connection with professional statement relating to the estate of [Mr A] up to 20 March 2015". In addition, there was an invoice from Babbé expressed to be for the period 2 March to 26 March 2015 for £829.50 plus disbursements of £9 (total £838.50). Again, this invoice was stated to be "payable by Messrs Coe and Anderson from client account monies held in relation to … property".

195.15.9 £1,250 was transferred on 21 May 2015, with the narrative "PHC Law – fees due". This related to an invoice dated 26 March 2015 from PHC Law Consultants Limited addressed to "the estate of [Mr A] deceased". The narrative to the invoice read, "Our charges in connection with continued investigation of the above matter from 16 December 2014 to date", and referred to the fee "as agreed" at £1,250.

195.16 The total withdrawals in the period 18 August 2014 to 21 May 2015 was £31,616.32, which was approaching half of the total value of the funds on the account when the investigations began. A total of £16,440 was in respect of the Respondent's own costs.

195.17 A total of £10,197 had been withdrawn from client account before the Respondent had met with Mr P. The Respondent had relied on having the authority of Mr P to withdraw money from client account as, on his case, Mr P was the client and could authorise the withdrawals. The Respondent had denied throughout the hearing that he needed the authority of the beneficiaries of Mr A in order to withdraw monies from the client account. The Respondent had given an account of events in which he had emphasised that he wanted to be satisfied of the identity of the client and had confirmed that he was satisfied of this at the meeting on 11 February 2015. On the Respondent's own evidence, it was only on and from 11 February 2015 that he understood and believed that he could rely on Mr P's authority in relation to dealing with the client account on the Chandlers/Mr A matter. The Tribunal considered the note of the meeting of 11 February 2015, which the Respondent had prepared and had told the Tribunal was accurate. That note did not contain any reference to the fact that bills and disbursements totalling over £10,000 had already been withdrawn from client account. The Tribunal saw no evidence to suggest that Mr P had given retrospective authority to withdraw those sums – even if he had had the authority to do so.

195.18 On the Respondent's own evidence, he accepted that by the time he received an email from Babbé on 27 February 2015, which confirmed that their enquiries had concluded and that it appeared no money was owed to Chandlers, he was aware that the money was due to Mr A's heirs. Despite this knowledge, the Respondent prepared a bill on 27 February 2015 and transferred £8,950 in respect of his costs on 28 February 2015. The Respondent had accepted that by the end of February 2015, if not before, he knew that Mr Miller's information about the entitlement to the money, which had been expressed in the correspondence of 18 June 2014, was correct.

195.19 The Respondent relied upon the fact that Babbé and Mr P had submitted invoices which were expressed to be payable from the client account on the Chandlers/Mr A matter as confirmation that he had the authority of the client, Chandlers, to withdraw money from client account. The Tribunal saw no evidence that the Respondent explicitly asked Babbé or Mr P for permission to withdraw money from client account to pay his costs. It could be said that the invoices from Babbé/Mr P appeared to be a request from the client, or on behalf of the client, to pay out various sums. However, by the time those bills were submitted, the Respondent (and Babbé/Mr P) knew that the money on the client account belonged to the heirs of Mr A.

195.20 The Tribunal noted that Mr P and Babbé had asked both the Respondent and Mr Coe if their costs could be paid. Seeking such approval was entirely inconsistent with the Respondent's assertion that Mr P was entitled to give instructions about what to do with the money.

195.21 The Tribunal noted and found that the Respondent had given no credible explanation for why he had not simply transferred the balance of the client account on this matter to Mr P or Babbé. On the Respondent's case, as presented to the Tribunal, that would have been the appropriate step as he maintained he was holding the money for Chandlers. It was incredible that Mr P would have refused to accept the money if he had believed he was entitled to all or part of it. The Respondent's explanation that Mr P and Babbé "could not be bothered" to deal with this matter was not credible, unless it was also accepted that Mr P knew he was not entitled to the money and

would thus be taking on responsibility for tracing and paying out to Mr A's beneficiaries. Given that the Respondent was expected by the Applicant to deal with outstanding residual balances on client account as promptly as possible, and that the Respondent asserted that Chandlers/Mr P were the client to whom his duty was owed, he could have insisted on returning the money to the client. The reason he did not do so, the Tribunal found, was that he knew Mr P was not entitled to the balance.

195.22 The Tribunal noted and found that withdrawals from client account could only be made in accordance with the provisions of Rule 20 AR 2011, as set out above, and that payment of fees could only be taken from client account where a solicitor had first given a bill or other written notification of costs to "the client or the paying party".

195.23 The Tribunal noted that the Respondent had not asserted at any point that he had sought or obtained the permission of the paying party, as he had the permission of the client and was acting with the client's knowledge. The Tribunal accepted that the client was, indeed, Chandlers. However, the Respondent was not entitled to rely on any permissions or agreements made by Chandlers/Mr P as they were not the paying parties. The Tribunal could not construe Rule 17.2 AR 2011 as meaning that a solicitor could simply send a bill to "the client" but not to the "paying party"; the Rule could not mean the solicitor could choose to whom the notification of costs was given. For example, where a solicitor was the sole executor of an estate it would clearly be wrong for the solicitor to simply prepare a bill to himself, as executor, and take the costs without informing the beneficiaries. A solicitor must inform the party whose money was being taken in costs.

195.24 Further, the Tribunal found that there was no retainer or agreement about costs in place between the Respondent and Mr A's heirs; there was, accordingly, no entitlement to costs at all at the time the Respondent's bills were prepared and paid. The Tribunal noted that the Applicant's position, and the evidence of Mr Johnson, indicated that where the persons entitled to the money were traced the solicitor could seek their agreement to pay costs. If the persons entitled were not traced, the Applicant could give permission to withdraw money to pay reasonable out of pocket expenses e.g. the costs of Land Registry searches, the costs of placing advertisements and the like. The Respondent had not sought the Applicant's permission to withdraw money to reimburse the expenses he had incurred, so there had been no determination of which disbursements might have been accepted as reasonable. The Tribunal noted that the expenses of the trip to Guernsey may well not have been regarded as reasonable or necessary in trying to trace those entitled to the money.

195.25 The Tribunal found that the Respondent had taken over £10,000 from the client account when, on his own evidence, he did not know who owned the money. He had taken over £20,000 from the client account when he knew that the money did not belong to Mr P, supposedly on the authority of Mr P. The Respondent had been on notice from at least June 2014 that the client, Chandlers, might not be the party which owned the money and even on the Respondent's evidence, that was clear to him by the end of February 2015.

195.26 In these circumstances, the Respondent had no justification under Rule 17.2 or Rule 20 AR 2011 to withdraw money from the client account ledger for Chandlers/Mr A. He did not have the permission of the paying party to pay himself – or others – and he was not entitled to raise costs without agreeing those with the paying party. The Tribunal was satisfied to the highest standard that the withdrawals were made in breach of the quoted provisions of the AR 2011. The Tribunal specifically dismissed the Respondent's contention that the word "client" in the allegation was simply a reference to Chandlers/Mr P. On a proper construction of the AR 2011, "client" in these circumstances included the paying party i.e., on the facts of this case, the heirs of Mr A. The Respondent may have been able to obtain the permission of the Applicant to withdraw monies for reasonable disbursements he had incurred in trying to determine who was entitled to the money and to trace those people, but he did not ask for that permission and so no permission had been granted.

195.27 The Tribunal considered whether these breaches of the AR 2011 demonstrated if the Respondent had acted without integrity and/or in a way that would undermine public trust in the legal profession. There could be no doubt that in withdrawing very large sums of money from client account, to which he was not in fact entitled, and in circumstances where he a) initially did not know who his client was and b) he knew that his client was not the person who owned the money, the Respondent had acted without integrity. Further, his conduct would undermine the trust the public would place in him and the provision of legal services as the public should properly expect solicitors to act carefully and openly with regard to their dealings with money belonging to clients or others. The Tribunal was satisfied to the highest standard that this allegation had been proved in full.

196. **Allegation 2.2 - After 12 December 2014 he held himself out to third parties to be authorised to act as a solicitor, at a time when he knew that he had no valid practising certificate or alternatively was reckless as to that fact. In doing so, he acted without integrity in breach of Principle2 and in a way that undermined public trust in the legal profession in breach of Principle 6.**

196.1 The factual background to this allegation is set out at paragraphs 111 to 115 above.

196.2 The Applicant submitted that from 12 December 2014 onwards the Respondent knew, or was reckless as to the fact that he had no valid Practising Certificate and accordingly that he was not authorised to act as a solicitor.

196.3 The Applicant submitted that in sending numerous letters on headed notepaper in the name of "Anderson Solicitors" after the revocation of his Practising Certificate the Respondent expressly or impliedly represented to the third party recipients that he was writing on behalf of an entity called "Anderson Solicitors" and was duly qualified and authorised to act as a solicitor, and he held himself out as such. The Applicant further submitted that the invoice of 27 February 2015 on the notepaper of "Anderson Solicitors" again expressly or impliedly represented to Babbé that he was acting as a solicitor on behalf of "Anderson Solicitor" and that he was duly qualified and authorised to act as such. Babbé had made a complaint to the Applicant in April 2015, raising concerns including a concern that the Respondent had held himself out as a solicitor without proper authorisation. Whilst holding out as a solicitor could amount

to a criminal offence, the allegation was put on the basis that the Respondent's conduct was in breach of Principles 2 and 6.

196.4 The Respondent submitted that he had had no intention to con anyone that he was still in practise. He had written on the Firm's notepaper to Babbé and others explaining that the Firm was closed and that he was dealing with residual client balances. The Respondent told the Tribunal that the notepaper which was headed "Anderson Solicitors" had been prepared in error by one of those who had helped him with typing duties after the closure of the Firm, and he had not spotted the error. The Respondent also submitted that the Applicant had asked him to carry out investigations with regard to the Chandlers/Mr A matter and he had carried out those investigations; the Applicant was well aware that he was doing so.

The Tribunal's Findings

196.5 The Tribunal considered the correspondence and the bills prepared by the Respondent in the period after 12 December 2014. The Tribunal noted that the Respondent accepted that he was aware his Practising Certificate had been revoked.

196.6 The Tribunal found that at least some of the correspondence with Mr P and Babbé stated that the Firm had closed on 29 December 2013, which was true. The letters did not, however, explain the Respondent's status as a non-practising solicitor. The fact that he sent bills relating to his costs would indicate to the person receiving the letter and bill that the Respondent was practising as a solicitor and the fact that some of the correspondence was in the name of "Anderson Solicitors" would reinforce that impression. Of course, "Anderson Solicitors" was not a recognised body. A member of the public who saw the correspondence may well have believed that the Respondent was practising as a solicitor and was authorised as such.

196.7 The Tribunal was satisfied that the correspondence and bills demonstrated that the Respondent had held himself out as authorised to practise, when he was not so authorised. Indeed, in the course of his evidence the Respondent had accepted that he had held himself out as a solicitor, in the context of the investigation into the Chandlers/Mr A matter. The Respondent had failed to make it clear to those receiving the correspondence that he was not a practising solicitor. The Tribunal noted that the Respondent relied on an extract from the Glossary to the SRA Handbook appeared to include those without a Practising Certificate within the definition of "solicitor". However, the Tribunal noted that s.1 of the Solicitors Act 1974 made it clear that no-one was entitled to act as a solicitor unless they had been admitted, their name was on the roll *and* they had in force a Practising Certificate. There was no merit in the Respondent's assertion that he fell within the definition of "solicitor", notwithstanding that his Practising Certificate had been revoked.

196.8 That said, the Tribunal was not satisfied that there had been any deliberate attempt by the Respondent to mislead anyone. It had been made clear to Babbé and Mr P that the Firm had closed and the Tribunal could not be sure to the required standard that the letters headed "Anderson Solicitors" had not been created in error. Although it was concerning that other solicitors, Babbé, had felt that they had been misled (such that they reported the Respondent to the Applicant), the Tribunal could not be sure that the Respondent had acted deliberately or in a way which lacked integrity. He had been

doing work which the Applicant was aware of, in trying to identify to whom the money on the Chandlers/Mr A ledger belonged, rather than carrying out reserved activities. The Tribunal could not be sure that the Respondent's conduct in this regard was such as would diminish the trust the public would place in him or the provision of legal services. Accordingly, whilst the Tribunal was satisfied that the Respondent had held himself out as a solicitor after 12 December 2014, it was not sure he had done so in breach of Principles 2 and/or 6, so this allegation was not proved.

197. **Allegation 2.3 - He failed to co-operate with the SRA in connection with its investigation into his conduct by failing to respond substantively or at all to letters dated 8 December 2014 and 24 July 2015. He thereby failed to comply with his legal and regulatory obligations and failed to deal with his regulator in an open, timely and co-operative manner, in breach of Principle 7. He also failed to co-operate fully with the SRA at all times, thereby failing to achieve Outcome 10.6 of the 2011 Code.**

197.1 The factual background to this allegation is set out at paragraphs 116 to 123 above.

197.2 The Applicant submitted that the Respondent had failed to respond to various letters which had required a response. He had been reminded of his obligation to co-operate with the Applicant. The Respondent had acknowledged receipt of the Applicant's letters, but had failed to respond substantively. The Applicant submitted that in failing to respond in an open and timely manner, the Respondent had fallen below the standards expected and was in breach of Principle 7.

197.3 In the course of his evidence, the Respondent had accepted that he had a duty to respond to correspondence from the Applicant and that he had failed to provide substantive responses to correspondence, although he denied any breach of his duties under Principle 7 and Outcome 10.6 of the 2011 Code.

197.4 The Tribunal noted and found that the letters of 8 December 2014 and 24 July 2015 were letters to which a substantive response was required within a reasonable period. The Respondent had failed to respond at all. In these circumstances, the Respondent had failed to comply with his duty to co-operate with the Applicant, which was his professional regulator whilst he was on the Roll of Solicitors i.e. even after his Practising Certificate was revoked. The Tribunal was satisfied to the higher standard that this allegation had been proved.

198. **Allegation 2.4 - It was alleged that the Respondent's conduct in respect of allegation 2.1 was dishonest, although proof of dishonesty was not an essential ingredient for proof of allegation 2.1.**

198.1 The Tribunal's findings in relation to allegation 2.1 are set out at paragraph 195 above, and in particular at paragraphs 195.15 to 195.27.

198.2 The Applicant submitted that the Respondent's conduct in respect of the withdrawals from the residual balance in the Chandlers/Mr A matter was dishonest according to the test laid down in Twinsectra v Yardley [2002] UKHL. The Applicant submitted that in withdrawing client funds when he knew he did not have the consent of the

client or the paying party, or the authority of the Applicant, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

198.3 It was further submitted that the Respondent was aware that his conduct was dishonest by those standards for the following reasons:

198.3.1 The AR 2011 was clear as to the circumstances in which client money could be withdrawn from client account. As an experienced solicitor and long-standing principal of his Firm, the Respondent was aware of these provisions;

198.3.2 The Guidance published by the Applicant on 31 October 2014 (see paragraph 110 above) made clear the circumstances in which residual balances could be used for time costs and/or out of pocket expenses;

198.3.3 As early as 13 March 2014, the Respondent was in correspondence with the Applicant with a view to obtaining authorisation pursuant to AR Rule 20.1(k) to pay the Chandlers/Mr A balance to charity and thereafter made applications in respect of other residual balances;

198.3.4 The Respondent failed to ask the Applicant if it was permissible to use the Chandlers/Mr A funds for time costs and/or out of pocket expenses;

198.3.5 The Respondent was aware from around or soon after 18 June 2014 that the monies held by the Firm were likely to belong to the heirs of Mr A;

198.3.6 The Respondent did not seek or obtain the consent of the heir(s) of Mr A for the payment of time costs, disbursements or expenses from the monies held by the Firm;

198.3.7 There was no basis on which the Respondent would have been entitled to charge on an hourly basis, in the absence of agreement by the paying party;

198.3.8 The Respondent had not sought the guidance of the Applicant with regard to either out of pocket expenses or his charges; The Applicant submitted that the Respondent did not make an enquiry as he did not want to be told that he could not raise the charges he wanted to raise;

198.3.9 The Respondent was well aware that the money belonged to someone with whom he had had no contact.

198.3.10 No solicitor in the position of the Respondent would think it was honest by the standards of reasonable and honest people to pay themselves from client monies for administrative work in seeking to locate the beneficial owner of the funds without obtaining the consent of that person, or the permission of the Applicant. This was particularly so in circumstances where such administrative work was necessitated by the Firm's own misconduct – in this case, the failure by

the Firm to comply with its obligation to return client funds after there was no longer a proper reason to retain them pursuant to Rule 15(3) Solicitors Accounts Rules 1998 and, since 6 October 2011, Rule 14(3) AR 2011; and

198.3.11 The Respondent had provided no explanation for his conduct, despite being asked by the Applicant to do so in a letter dated 24 July 2015.

198.4 In those circumstances, it was submitted, no honest solicitor would have withdrawn money from client account.

198.5 The Respondent had both denied allegation 2.1 and that his conduct had been dishonest. He relied on having obtained the authority of Mr P to withdraw money from client account.

The Tribunal's Findings

198.6 For the reasons set out in relation to allegation 2.1 above, the Tribunal was satisfied that the consent of Mr P was not sufficient to permit withdrawals from client account.

198.7 The Tribunal noted that on 5 December 2014 Mr Johnson wrote to the Respondent about the Chandlers/Mr A matter and included the statement, "The firm is currently holding the sum of £66,611.93 on a ledger…" The Tribunal did not see within the hearing papers any correspondence from the Respondent in which he told the Applicant that by that date he had already withdrawn £3,740 from the ledger and that a further £5,507.50 was withdrawn within weeks of Mr Johnson's letter being sent. The Tribunal found that the Respondent had failed to be open with the Applicant about the fact he had withdrawn any money from client account and he had not sought the Applicant's permission to do so.

198.8 The Tribunal found that it was reasonable and appropriate for the Applicant to ask the Respondent to make enquiries about this matter as in March 2014, when he first wrote seeking permission to pay the money to charity, he had obtained little information about who the client or person entitled was. The Respondent had carried out some investigations, albeit those had taken some time. As early as June 2014 the Respondent was on notice that the money he was holding might well belong to Mr A's heirs, albeit some checking of that proposition was reasonable. Despite being aware that Mr A's heirs might be entitled to the money, the Respondent had maintained that he believed Chandlers was the client and entitled to instruct him on how to deal with the money. The Respondent had not, however, sent the money to Mr P/Babbé, as he would have done if he really believed that Mr P was entitled to it. In any event, the Respondent had confirmed that by the end of February 2015 he knew that Mr A's heirs were entitled to the money and that Mr P was not. It was not credible, therefore, that the Respondent could believe he was entitled to withdraw money from client account on the supposed authority of Mr P, who had no interest in the money. Over £20,000 was withdrawn from client account after the point where, even on his own account, the Respondent knew the money did not belong to Chandlers/Mr P. Prior to the meeting on 11 February 2015, the Respondent had had no authority from Mr P to withdraw any money, but had made substantial withdrawals

nonetheless. Whilst Chandlers/Mr P were the client, they were not the owners of the money and could not authorise any dealings with it.

198.9 The Tribunal noted that on 5 December 2014 the Respondent had written to the Nigerian High Commission in London stating, "…The firm was holding on its client account funds which may relate to the above named deceased" i.e. Mr A.

198.10 The Tribunal had no doubt that by the second half of 2014 the Respondent was aware that there was, at the least, considerable doubt as to whether the monies held belonged to Chandlers/Mr P.

198.11 Despite clear indications that the money belonged to Mr A's heirs, the Respondent had paid out considerable sums from client account when he did not know who his client was or to whom the money belonged.

198.12 In all of these circumstances, the Tribunal accepted the submissions of the Applicant set out at paragraphs 198.2 to 198.3 above. Withdrawing sums without the authority of the person entitled to that money, particularly where it was for the benefit of the Respondent himself, was dishonest by the ordinary standards of reasonable and honest people. The Respondent was aware of the provisions of the AR 2011, from at least March 2014 when he first contacted the Applicant about this matter. From the second half of 2014 the Respondent was aware that there was doubt about whether Chandlers had any interest in the money. The Respondent was therefore aware that his conduct was dishonest by those same standards.

198.13 The Tribunal concluded that no solicitor in the position of the Respondent would think it was honest by the standards of reasonable and honest people to pay themselves from client monies for administrative work in seeking to locate the beneficial owner of the funds without obtaining the consent of that person, or the permission of the Applicant.

198.14 The Tribunal was satisfied to the highest standard that this allegation of dishonesty had been proved.

Previous Disciplinary Matters

199. There were two previous matters in which findings had been made against the Respondent.

200. Matter number 10929/2012 was heard at the Tribunal on 28 to 31 January and 1 February 2013. The proven allegations related to the provision of costs information by the Firm to conveyancing clients. At the conclusion of the hearing, the Tribunal had fined this Respondent £1,000 (jointly and severally with other Respondents) and ordered him to pay the costs of the proceedings, jointly and severally with others, in the total sum of £80,000. The Applicant had appealed the decision, in relation to findings and sanction and the Respondent (and others) had cross appealed in relation to the costs order. After an appeal hearing in the High Court on 21 November 2013, the case was remitted to the Tribunal on both sanction and costs, for the reasons and with the guidance set out in the High Court judgment published on 17 December

2013. After a rehearing on those issues on 28 October 2014, the Tribunal ordered this Respondent to pay a fine of £15,000 and costs fixed in the sum of £40,000.

201. The hearing of the part of this case which had been severed from the matters in the present hearing had taken place on 28 and 29 April and 7 October 2015. In that case, the allegations summarised below were found proved against the Respondent:

201.1 He failed to notify the Applicant of the Firm's entry into the Extended Indemnity Period, contrary to Rule 17(3) SRA Indemnity Insurance Rules 2013, and in breach of Principle 7/Outcome 10.3 of the 2011 Code;

201.2 He failed to achieve an orderly and transparent winding down of the Firm's activities in breach of Principles 5, 7 and 10/failure to achieve Outcomes 7.4 and 10.13;

201.3 Failed to comply with an orderly wind-down compliance plan, in breach of Principles 4, 6, 7 and 10;

201.4 Failed to return client money to the client promptly, once there was no longer any proper reason to retain those funds, in breach of Rules 7 and 14.3 AR 2011, and in breach of Principles 4, 7, 8 and 10.

202. The Tribunal had ordered that the Respondent should be suspended from practise for a period of three years from 7 October 2015 and on the expiry of that suspension his practise should be subject to conditions. The Tribunal further ordered the Respondent to pay costs in the sum of £34,000.

Mitigation

203. The Respondent stated that he had nothing to add to the evidence and submissions he had made in the course of the hearing.

Sanction

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

205. This was clearly a case in which neither "no order" or a reprimand would be appropriate. Further, it was a matter which was too serious for a fine. Even without the finding of dishonesty, the Tribunal would have been obliged to consider suspension or striking off as the appropriate sanctions.

206. The Tribunal had made two findings of dishonesty against the Respondent. The Respondent had not submitted that there were any exceptional circumstances in this case, and the Tribunal did not find there were any exceptional circumstances. The guidance given in the case law, in particular in the matter of SRA v Sharma [2010] EWHC 2022 Admin ("Sharma") made it clear that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances. The Respondent's dishonesty had occurred in a situation in which his creditors had been misled and in relation to the Respondent paying

himself (and others) when he was not entitled to do so. The conduct was deliberate, rather than spontaneous.

207. The Tribunal noted that the Respondent had had findings made against him in matter number 10929/2012. Those findings were comparatively minor. The Tribunal further noted that in the other part of the present proceedings, a division of the Tribunal had determined that the appropriate sanction was an order suspending the Respondent from practise for three years. The Tribunal was conscious that it should not expose the Respondent to a double penalty, in that the present allegations could have been heard with those determined in 2015, in which case the sanction would have been considered in the round. Nevertheless, the fact that the Respondent's misconduct in relation to the other allegations had been deemed serious enough to warrant suspension confirmed the Tribunal's view that the only reasonable and proportionate sanction was an order to strike off the Respondent.

Costs

208. The Applicant made an application for an order for the Respondent to pay the Applicant's costs of the proceedings. The Applicant's schedule of costs totalled £30,425.40, including counsel's fees. The costs of Penningtons Manches LLP had been calculated at £200 per hour for work done by a consultant solicitor and £145 per hour for the (experienced) solicitor who had carried out the bulk of the work in the case.

209. The Respondent was invited to make submissions in relation to costs but stated that he had no comment on the Applicant's claim for costs. The Respondent stated that he was bankrupt and that was all he wanted to have considered in relation to costs.

210. The Tribunal considered the Applicant's costs schedule and the matters which had been presented in the hearing in order to determine the reasonable and proportionate costs of the case. It noted that the Respondent had made no comment on the costs schedule; in the absence of submissions from the Respondent, the Tribunal considered the costs schedule critically.

211. The Tribunal determined that the hourly rates applied to the costs were reasonable and that the work had been carried out, to a significant extent, by the solicitor whose work was charged at the lower rate. The costs on the schedule included an estimate for attendance at the hearing. The actual attendance was higher than had been estimated, as the hearing did not conclude until after 6pm on the second day of the hearing. Counsel's fees were proportionate. The Tribunal noted that the Respondent had filed and served a considerable quantity of documents in relation to this matter, all of which had to be considered by the Applicant's solicitors, whether or not ultimately those documents were material to any matter in the case. This would have the effect of increasing the time it had been necessary to spend in considering documents in the case and hence the costs.

212. The Tribunal noted that the Applicant had failed to prove allegation 2.2, although the factual matters on which that allegation were based had been proved. The Tribunal did not consider it appropriate to reduce the costs because one allegation had not been proved. The Respondent's conduct of the proceedings had contributed to the costs

being at the level they were, and indeed the estimate of costs for the hearing had underestimated the actual time required. In these circumstances, the Tribunal summarily assessed the reasonable costs of the proceedings in the sum claimed by the Applicant, namely £30,425.40.

213. The Tribunal considered whether or not any adjustment to the costs to be awarded, or the terms of any costs order, should be amended in the light of the Respondent's means.

214. The Tribunal accepted that the Respondent was bankrupt. However, the Respondent had not submitted any details of his financial circumstances. An order that he should submit evidence of means at least 14 days before the substantive hearing, if he wanted his means to be taken into account, had been made at a CMH on 24 March 2015. The Tribunal noted that in the Memorandum of the CMH which had taken place on 8 December 2015, it was recorded that the Tribunal had reminded the Respondent of the need to comply with that direction and it had given him clarification as to what was required. The Tribunal had no information before it on which it could base either an adjustment to the costs which would otherwise be reasonable and proportionate, or on which it could base an order that any costs should not be enforced without the further permission of the Tribunal.

215. Further, the Tribunal noted that the Nortel/Lehman case aka Bloom v Pensions Regulator [2013] UKSC 52 ("Nortel") it was clearly indicated 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. There was thus no advantage to the Respondent in ordering that payment of the debt should be deferred.

216. The Tribunal was satisfied in all of the circumstances that the appropriate order was for the Respondent to pay the Applicant's costs of the proceedings, assessed in the sum of £30,425.40.

Statement of Full Order

217. The Tribunal ORDERED that the Respondent, CHRISTOPHER JAMES ANDERSON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,425.40.

Dated this 2nd day of March 2016
On behalf of the Tribunal

A. E. Banks
Chairman