SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11302-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JANE MARGARET HELEN HENRY Respondent

Before:

Mr D. Glass (in the chair)
Mr R. Hegarty
Mr M. C. Baughan

Date of Hearing: 6 May 2015

Appearances

Mr Jonathan Goodwin, of Jonathan Goodwin, Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent Jane Margaret Helen Henry made by the Solicitors Regulation Authority ("SRA") were that:

1.1 She failed adequately, or at all, to carry out personal identity checks and the required anti-money-laundering checks on a client(s) (Mr and Mrs K), in breach of Principles 6, 8, and 10 of the SRA Principles 2011 and/or Regulations 5, 7, 8 and 9 of The Money Laundering Regulations 2007.

1.2 She created and improperly signed a false letter of authority dated 22 December 2011, purporting the same to have been signed by Mr and Mrs K, in breach of Principles 2 and 6 of the SRA Principles 2011.

1.3 On 20 November 2012 she was cautioned for an offence contrary to the Forgery and Counterfeiting Act 1981, thereby breaching Principles 1, 2 and 6 of the SRA Principles 2011.

1.4 She failed to co-operate adequately, or at all, with the SRA, in breach of Principle 7 of the SRA Principles 2011 and Outcome 10.6 of the SRA Code of Conduct 2011.

1.5 She facilitated, permitted or acquiesced in money being paid into and out of the firm's client account when there was no underlying legal transaction(s) in breach of note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 and Rules 1.02, 1.03 and 1.06 of the Solicitors Code of Conduct 2007.

Whilst dishonesty was alleged with respect to allegations 1.2 and 1.3 above, proof of dishonesty was not an essential ingredient for proof of the allegations.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 4 November 2014 with exhibit JRG1
- Bundle of email communications between the Applicant and the Respondent from 3 November 2014 to 5 May 2014
- Applicant's statement of costs dated 1 May 2015

Respondent

- Answer of the Respondent dated 15 January 2015

Preliminary Issue

3. For the Applicant, Mr Goodwin submitted that the Respondent was not present and that the Tribunal needed to determine whether to proceed in her absence. He referred the Tribunal to the Rule 5 Statement and exhibit, the Respondent's Answer dated 15 January 2015 and exchanges of e-mails with the Respondent of which she was

aware. Mr Goodwin referred the Tribunal to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which provided:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Mr Goodwin referred the Tribunal to a letter which he had sent to the Respondent dated 3 November 2014 informing her of his instructions to institute disciplinary proceedings in the Tribunal and alerting her that the "allegation statement and supporting documents" would be served upon her in due course by the Tribunal. On 24 November 2014, the Respondent replied stating there had been no one at home to sign for the letter dated 5 November 2014 and accompanying documents from the Tribunal until 20 November 2014. This confirmed that the Respondent had received the Rule 5 Statement and accompanying bundle. On 2 December 2014, the parties were advised by the Tribunal office that the matter would be listed for 6 and 7 May 2015 and formal confirmation was sent by letter on the same day. Mr Goodwin referred the Tribunal to an email from the Respondent to him dated 4 December 2014 about the Investigation Officer ("IO") Mr Dhanda's Report (which was in the exhibit bundle). On 16 January 2015, the Respondent filed her Answer. Mr Goodwin urged the Tribunal to read that document in its entirety as it represented the Respondent's position. At paragraph 10 she stated:

> "I understand there is a two-day hearing scheduled for May 2015 if do (sic) not admit the allegations. This hearing will result in substantial costs and expenses which I cannot afford to pay if they are awarded against me so I cannot proceed to defend myself. Reluctantly, therefore, I have no alternative but to admit the bald statements of fact contained in the allegations simply because they happened (or because the [Applicant] believes they happened) but they are subject to my Reply and the explanations therein. It appears that is sufficient for the Tribunal to find them proved and indeed it appears that my "guilt" has already been pre-judged despite anything I may say or do in my defence. I feel I am being forced to admit these allegations as I cannot afford either for my health or for my finances to fight them."

4. Mr Goodwin then took the Tribunal through e-mail exchanges he had had with the Respondent from 16 January 2015, in which he sought unequivocal pleas to the allegations and confirmation as to whether she would attend the hearing and whether she required the presence of the IO. His email of 16 January 2015 included:

> "The decision as to whether or not to admit any or all of the allegations is entirely one for you and you should not, in any sense, feel compelled to make admissions which do not properly reflect your position."

On the same day 16 January, Mr Goodwin sent to the Respondent, Notice to Admit documents and a Civil Evidence Act notice regarding documents. Mr Goodwin submitted that the Respondent purported to accept the facts in the Rule 5 Statement but not their interpretation; she purported to make admissions but then said that she

had done nothing wrong. On 27 January 2015, the Respondent e-mailed Mr Goodwin including:

> "I do not think the contents of my Reply can be any clearer. I am being compelled to admit allegations which I (sic) not believe are true. I have already said I cannot afford to challenge these allegations both on health and financial grounds. I say again... I did nothing intentionally, deliberately, fraudulently. Nothing.
>
> ...
>
> In addition, how can I produce medical evidence over three years after the event? I would draw your attention to the third paragraph of my memo to [Mr RB, a partner at the firm] at pages 81 and 82 of the bundle where I explained the enormous stress I had been under for a long time. If I had gone to the doctor to be described anti-depressants then I (sic) not been able to function at all or keep up any semblance of normality. I know it is difficult for someone who has not been in my position to have any understanding of the consequences of stress and lack of sleep but I would ask you, and the Tribunal, to try."

The Respondent continued to address each allegation in outline (see Findings of fact and law below) and then continued:

> "I therefore do not believe any of the allegations are justified, or, in the alternative, sufficient to justify the referral to the SDT.
>
> On the condition that you confirm that this e-mail will be placed prominently in front of the Tribunal – along with my formal Reply – in the hope that the Tribunal will at least consider and appreciate the explanations I have given and the position I find myself in, namely being forced to admit allegations because
>
> a) I cannot afford the cost of a two-day hearing, and
> b) my health simply is not up to it
>
> I very reluctantly admit the allegations – not because I believe any of the conclusions drawn by you or the [Applicant] are correct or fair, but because I have no alternative but to do so. I say again, I would hope the Tribunal shows some better understanding and some leniency which up to now appears to have been lacking.
>
> By admitting these allegations I assume the two-day hearing will not be required.
>
> I will not be attending the hearing and there seems no requirement for Mr Dhanda to do so as well. His factual account is correct but his conclusions are wrong."

5. Mr Goodwin invited the Tribunal to proceed on the basis that the allegations were denied and must be proved to the criminal standard including the allegation of dishonesty. The Respondent stated in her e-mail quoted above that she had no intention of attending and so she knew of hearing. Mr Goodwin also asked the Tribunal to consider carefully his e-mail to the Respondent of 2 February 2015 in reply to the Respondent's in which he repeated that she had the alternative of denying the allegations if she did not consider they were made out; that he would proceed on the basis that the allegations were denied and:

> "...on the basis that you have the Rule 5 Statement and supporting documents and are aware as to the date of the substantive hearing (6 & 7 May 2015) I will invite the Tribunal to proceed in your absence should you not attend.
>
> Further, given the position you adopt I am arranging for the Investigation Officer to attend to give evidence if required."

6. After further exchanges, on 1 May 2015, Mr Goodwin e-mailed the Respondent among other things sending the Applicant's schedule of costs and a Personal Financial Statement Form which he asked her to complete and return. The Respondent replied on 4 May 2015

> "I gave a very full and frank account of why I signed the letter of authority at paragraphs 22-28 of my Reply dated 31 December 2012. It is quite obvious that I neither had the mental capacity to commit a dishonest act nor could I have formed the intention to do so. I was not dishonest in anyway. I therefore absolutely and utterly deny any allegation of dishonesty.
>
> I have become increasingly concerned for some time now that I have been forced, for financial reasons both to admit the allegations and then, under pressure from you, to make my allegations unequivocal. I am so uneasy about how I was bullied by you (which of course I know you will deny but on any reading of your e-mail dated 2 February it is clear you were putting me under intolerable pressure) into making the unequivocal admission. I did not make the unequivocal admission of my own free will. However as you made clear in one of your e-mails, it is not an option for me to withdraw the unequivocal admission as you will immediately say we need a much longer hearing with Mr Dhanda present and the costs will escalate. I would however like the tribunal to be aware of how uncomfortable I am with position you have put me in and I trust you will make this known to them on Wednesday. I will not be attending the hearing..."

Mr Goodwin refuted the suggestion that the Respondent had been forced, bullied or compelled to make admissions. The email exchanges continued concluding on 5 May 2015 when Mr Goodwin again set out that the Respondent could attend and deny each of the allegations to include the dishonesty allegation and to put her position regarding the costs claim. Mr Goodwin submitted that he was making the Tribunal aware of the Respondent's position by reading out her e-mails and not just copying them to the Tribunal. Mr Goodwin also submitted that if admissions were made and

the Respondent's admissions were unequivocal that would reduce costs and so her allegations against him about driving cost up were without merit. He had received no response to that last e-mail. The Respondent was not present and Mr Goodwin submitted that the Tribunal could be entirely satisfied she had received the Rule 5 Statement and documents; she was aware of the substantive hearing date and had chosen voluntarily to absent herself. There was a reference to her state of health but no evidence regarding inability to attend or that she did not know right from wrong when she carried out the conduct in question.

7. The Tribunal considered the submissions for the Applicant and the detailed exchanges between Mr Goodwin and the Respondent. The Tribunal had regard to the judgment in R v Hayward, Jones and Purvis [2001] QB 862, CA which was applicable in disciplinary proceedings. A decision to proceed in the absence of the Respondent was within the discretion of the Tribunal but had to be exercised with great care. The Tribunal was satisfied that the Respondent had received the Rule 5 Statement and accompanying documents and had been notified of the hearing date. There were references to impecuniosity in the communications from the Respondent but this did not justify non-attendance. She had also referred to her health but she had produced no medical evidence to support the reference. The Tribunal considered that the Respondent had shown a clear and deliberate intention not to attend the hearing; she said on a number of occasions in her communications that she did not intend to do so. There was no indication that an adjournment might result in the Respondent attending voluntarily, whatever its length. The Tribunal considered that she had waived her right to appear and that it was in the interests of justice for the matter to be determined and that it would exercise its discretion to continue in the absence of the Respondent and where she was not represented.

8. The Tribunal also had to consider the nature of the admissions which the Respondent had made in her communications with Mr Goodwin. In her e-mail of 2 February 2015, the Respondent stated "my unequivocal admission of the allegations made against me." However it appeared from the exchanges that the Respondent made these admissions, having earlier vigorously denied the allegation of dishonesty, because she wished to curtail the length of the hearing and presumably the costs. She had also made an allegation of bullying against Mr Goodwin and stated in her email of 4 May 2015 that Mr Goodwin had put her under intolerable pressure into making an unequivocal admission. She stated that she did not make the unequivocal admission of her own free will. The Tribunal had been taken through the exchanges of e-mails between Mr Goodwin and the Respondent in detail; it considered that Mr Goodwin had attempted to assist the Tribunal and the Respondent by persevering in seeking to clarify whether her admissions were unequivocal or not. The Respondent had it seemed, misunderstood his attempts to be helpful but the Tribunal did not consider that there was any evidence of intolerable pressure or bullying on the part of Mr Goodwin. The Tribunal rejected any such allegations. Because the admissions were so hedged in with qualifications, the Tribunal did not consider that it would be safe to rely on them and would treat all the charges as denied. The Applicant would be obliged therefore to prove the allegations to the required standard; that is sure beyond reasonable doubt. This would have an impact on the costs but that could not be avoided.

Factual Background

9. The Respondent was born in 1952 and admitted to the Roll of Solicitors in 1976 and her name remained on the Roll.

10. At all relevant times, the Respondent practised as a Consultant Solicitor with Pemberton Greenish LLP ("the firm") in London. The Forensic Investigation Department of the Applicant carried out an inspection of the books of account and other documents of the firm commencing 4 May 2012 and produced a Forensic Investigation ("FI") Report dated 28 September 2012.

Allegation 1.1

11. The Respondent acted for clients in connection with a property transaction relating to 88-90 AM Street, London. The Respondent took instructions from new clients Mr and Mrs K on 19 December 2011 in which the firm was instructed to act for them initially in relation to raising a short-term loan of £500,000 secured against their property.

12. A client care letter dated 19 December 2011 referred to the preparation and completion of a loan agreement and was addressed to Mr and Mrs K and signed by both of them.

13. On 19 December 2011, the Respondent received an e-mail from SC Finance Ltd ("SCFL") attaching a draft loan and charge documentation and providing details of its solicitors CP.

14. On 21 December 2011, the solicitor for SCFL, CP informed the Respondent that his client had encountered a problem and that he was not sure that it could proceed.

15. On 22 December 2011, the Respondent received an e-mail from RB LLP solicitors who were acting for LA Management Ltd ("LAML") which indicated that it was taking over the position of SCFL in order to get the matter through before Christmas. The indication was that the transaction would be converted into a contract to acquire the property with a buy-out clause for the owner. The contract was also to be protected by way of a restriction on the owner's title prohibiting any dealings without the lender's consent.

16. On 22 December 2011, the Respondent replied to the solicitors acting for LAML indicating that the terms were agreed and requesting draft contract documentation. There was no evidence on the file to indicate that the conversion of the transaction from a loan to a contract to acquire the property with a buy-out clause for the owner was either discussed or agreed with the client.

17. On 23 December 2011, contracts were exchanged between the Respondent and RB LLP and the sum of £500,000 was received into the firm's client bank account from RB LLP.

18. On the same day, the Respondent authorised a payment of £445,000 to CC the client's accountant, and £50,000 to HAIAA noted as a repayment of a loan.

19. The above payments were based on an authority letter dated 20 December 2011 from Mr and Mrs K.

20. The letter dated 20 December 2011 recorded Mr and Mrs K's address as 4 KL Rise when in fact the correct address was 4 KL Close. The letter referred to the facility between SCFL "and ourselves" when in fact the lending party was LAML.

21. The agreement for sale identified that the completion date was 23 April 2012 and that the seller had termination rights, namely that the agreement would cease if the seller, among other things, paid £550,000 to the buyer by 6 January 2012 or paid £600,000 after 6 January 2012 but on or before 23 March 2012.

22. By e-mails dated 6 and 9 January 2012, RB LLP the solicitors for the lender enquired of the Respondent whether her client would be terminating the contract.

23. Problems with the transaction were identified when, in accordance with the Agreement, RB LLP attempted to register a restriction against the Title number. On 6 January 2012, the Land Registry wrote to the registered owners who wrote back on 11 January 2012 objecting to the restriction.

24. On 11 January 2012, the Respondent's secretary e-mailed her indicating that Mr K had called RB LLP indicating that he had been the victim of identity fraud and that he had never met the Respondent.

25. On 12 January 2012, RB LLP e-mailed the Respondent a copy of a fax received from Plymouth Land Registry, together with the objection letters sent in by the true Mr K. The letter objected to the application to register a restriction on the property and stated, amongst other things:

> "We own absolute title to 88-90 [AM] Street, have no mortgage or other borrowings on it and are not seeking to raise finance against it. Thankfully we were alerted to this application by the letter sent from your offices dated 6th January 2012 which was received yesterday. We have no knowledge of [RB] LLP, [LAML], [PG] or the firm you mentioned – [SCFL].
>
> The only conclusion we can come to is that this is an attempted mortgage fraud and we have therefore contacted our solicitors and are seeking their advice about Police involvement. This is the second time that a fraud has been attempted against us on this property and we would be grateful for any advice you can offer to prevent further attempts."

26. By letter dated 13 January 2012, the firm made an initial report to the Applicant in respect of the transaction dealt with by the Respondent.

27. In January 2012, the firm also referred the transaction to the Serious Organised Crime Agency ("SOCA"). It was understood that the police informed the firm that they had recovered part of the money paid out by the firm and had returned it to LAML which also subsequently received further reimbursement of the money it had lost.

28. On 23 March 2012, the firm submitted a further detailed report to the Applicant.

Allegations 1.2 and 1.3

29. The firm raised concerns with the Respondent as to whether she had authority to sign the sale contract on behalf of Mr and Mrs K on 23 December 2011.

30. When the file was first reviewed on 13 January 2012 there was no evidence of an authority but by 16 January 2012 the file included an authority letter dated 22 December 2011, purportedly signed by Mr K and Mrs K.

31. When challenged, the Respondent said that the authority had been sent to the clients previously and was returned by them by post.

32. Subsequently, the firm received confirmation from the Police that the Respondent had admitted to them that she had created the authority at home over the weekend of 14/15 January 2012, forged the clients' signatures and inserted the authority letter into the file on 16 January 2012.

33. On 20 November 2012, the Respondent was cautioned by the police for making a false instrument with intent that it be accepted as genuine, contrary to The Forgery and Counterfeiting Act 1981.

Allegation 1.4

34. On 7 June 2012, the IO spoke to the Respondent inviting her for an interview. The Respondent said that she had received a letter from the firm's supervisor at the Applicant in respect of the report that the firm had sent the Applicant and prior to responding to that letter she had requested a copy of the firm's report.

35. On 12 June 2012, the supervisor e-mailed the Respondent a copy of the firm's report and, amongst other things, stated:

> "Mr Dhanda will be arranging a convenient time for you to meet with us to be able to provide your version of events and will be in contact with you shortly."

36. On 19 June 2012, the IO had left a telephone message for the Respondent to arrange a date and time for a meeting with her. The Respondent replied to the supervisor by e-mail with a copy to the IO advising that she needed to comment on the report by the firm and needed to see what other correspondence and communications had passed between the Applicant and the firm. She referred to making subject access requests to the firm and the Applicant and that until they were dealt with she would not be in a position to respond fully to all the allegations.

37. On 24 September 2012, the supervisor advised the IO that the Respondent had made a data subject access request on 25 June 2012 which was responded to on 23 July 2012 and that since that day the supervisor had not received a reply or further correspondence from Respondent.

38. On 24 September 2012, the IO left a telephone message for the Respondent to contact him as soon as possible. The Respondent replied by e-mail on 25 September 2012 referring to the data subject access request and stating that she wished to defer her response to the Applicant until the police had concluded their investigations.

Allegation 1.5

39. Two matters were exemplified within the FI Report as follows:

IN Consultants Ltd

40. A Companies House search revealed that IN Consultants Ltd ("INC") was a consultancy business with Mr L-C as its sole director. It was understood by the Applicant that Mr L-C was the life partner of the Respondent.

41. The ledger relating to INC show the Respondent was the fee earner with the matter description, "General Commercial".

42. The ledger account revealed that on 5 October 2010, £97,119.17 was received from K Solicitors where Mr L-C was a partner until 14 May 2010. On 6 October 2010, £38,400 was paid to a Ms M Henry with the narrative "Payment of Fees". On 11 October 2010, a further payment of £16,307 was paid to Miss M Henry, with the narrative "Payment to settle outstanding fees".

43. On 1 March and 29 March 2011, two payments of £25,000 and £16,200 respectively were made to HAR to an account in Switzerland. On 23 March 2011, £960 was transferred to the firm's office account in respect of fees. The bill of costs referred to "Reviewing Commercial Agreements".

44. The FI Report identified that there were approximately 50 pages in the client file consisting mainly of client care documents, client identity and Anti-Money Laundering checks and authority letters for the payments.

Dr ZBM

45. The above client, based in Dubai was identity-checked using copies of his United Arab Emirates passport and Dubai utility bill certified by Mr L-C on 24 August 2010.

46. The ledger showed that the Respondent was the fee earner and the matter description was "Corporate Matters – Dr ZB".

47. The ledger account showed that on 27 August 2010, £83,623.58 was received from K Solicitors.

48. On 7 June 2011, £80,100 was paid to HR Solicitors for "SDLT and Land Registry Fees" leaving a balance of £3,523.58 which remained the position as at the date of the FI Report.

49. The FI Report identified that there were approximately 20 pages in the client file consisting mainly of client care documents and client identity checks. The client care letter was dated 14 October 2010 and addressed to the client at his address in Dubai. A signed copy of this letter dated 15 October 2010 was also found on the file, which appeared to be signed by Mr L-C and annotated "On behalf of Dr ZBM".

Witnesses

50. Mr Mohnish Dhanda IO gave evidence. He was a chartered accountant employed by the Applicant and its predecessors for approximately 22 years. He had carried out several hundred investigations. He confirmed the accuracy of the FI Report. He could not assist about the timescale for its delivery to the Respondent as his role concluded once he had submitted the report internally. The witness was asked by the Tribunal about whether he had found on the files a bill which the Respondent asserted in her Response had been rendered to INC for £800 plus VAT for work done by her secretary in preparing and amending a number of draft documents. The witness said that he had no record of such a bill. The witness also gave evidence to clarify the costs claim in respect of the investigation which is referred to under the heading of Costs below.

Findings of Fact and Law

51. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

52. Allegation 1.1 - She [the Respondent] failed adequately, or at all, to carry out personal identity checks and the required anti-money-laundering checks on a client(s) (Mr and Mrs K), in breach of Principle 6, 8, and 10 of the SRA Principles 2011 and/or Regulations 5, 7, 8 and 9 of The Money Laundering Regulations 2007.

52.1 For the Applicant, Mr Goodwin submitted that the Respondent was a solicitor of some years' experience and qualification. He referred the Tribunal to the FI Report which set out that in December 2011, the Respondent had acted in respect of a property transaction which had resulted in £495,000 being paid out from the firm's client account on instructions from vendor clients on whom the Respondent had failed to apply appropriate due diligence and who were later found to be responsible for posing as individuals who owned the property. Mr Goodwin relied on the facts set out in the Rule 5 Statement and the FI Report. He referred the Tribunal to the report made to the Applicant by the firm. The report indicated that the Respondent had failed to comply with the firm's procedures in relation to the identification of new clients and failed to exercise due care and judgement in questioning the nature of the transaction which changed significantly during its course. The firm made a further detailed report on 23 March 2012. Mr Goodwin referred the Tribunal to the summary in the FI Report of what the firm had reported. The initial contact did not come from the clients but from

a third party who was apparently known to the Respondent. The fact that the initial contact did not come from the clients should have put the Respondent on notice that she needed to make appropriate enquiries. The original instruction purported to come from Mr and Mrs K, however when the Respondent first met the clients to verify their identity only Mrs K's identification documents were provided. Mr K indicated that his passport was at the Passport Office to be renewed and that he had no other identification documents. The Respondent accepted this explanation and opened the file in the name of Mrs K alone but continued to act for both of them. The Respondent did not examine the identification documents provided by Mrs K closely. The passport contained a discrepancy in the numbering and the council tax bill appeared to be a compilation of various bills. Also there was an inconsistency in the dates within the bill which could have been spotted. The firm's procedures required that an electronic anti-money-laundering search was carried out against each new client. The Respondent's secretary carried out a search as instructed by the Respondent. When inputting information it was stated that the firm had seen Mrs K's UK passport and utility bill and that she was interviewed at home which resulted in a "Passed" result. In fact Mrs K had not been interviewed at home and if that information had been imported, the result would have been "Referred". No search was carried out against Mr K. The Respondent said that she had always intended to add Mr K as a client and to amend the file as soon as he produced identification documents but this never happened. The title documents for the property gave an address for Mr and Mrs K as a house in Bristol. However the address they provided to her (and corroborated by the identification documents) was a flat in Neasden. The Respondent said that they had told her that they were now renting a flat and were not now normally resident at their Bristol address. One evening during the course of the transaction the Respondent drove to Bushey, Hertfordshire to meet Mr and Mrs K in a pub to get them to sign the mortgage documents which was an unusual thing for a senior solicitor to do. The transaction was concluded in a great hurry and had to be done just before Christmas and this did not seem to arouse the Respondent's suspicions.

52.2 Mr Goodwin referred to these matters in conjunction with the alleged failure to comply with the firm's own rules and the Money Laundering Rules 2007. Regulation 3 imposed duties upon "relevant person" and that definition included "independent legal professionals acting in the course of business carried on by them the United Kingdom". Regulation 5 touched on identification of the customer or clients on the basis of documents, data or information obtained from a reliable and independent source. Regulation 7 dealt with the application of customer due diligence including applying customer due diligence measures at appropriate times to existing customers on a risk-sensitive basis. Regulation 8 dealt with ongoing monitoring and Regulation 9 with the timing of verification and ongoing sensitivity towards changes that might occur. Mr Goodwin pointed out that on 16 January 2012, the Respondent wrote a memorandum to Mr RB of the firm explaining "some of the things that appear to have gone wrong" in respect of the matter of Mr and Mrs K. She also attached her own report in respect of the circumstances surrounding the matter. She stated amongst other things:

> "I am not making excuses as I know I could and should have been more diligent and alert"

> "It didn't occur to me it could be deemed to be a residential/commercial property transaction – if it had I would never have attempted to do it myself... this was a facility letter and loan which I believe was well within my legal capabilities."

> "I accept that I did not look closely at the council tax bill in particular. I suspect I am not alone in this as I am sure many people in the office barely glance at client ID. I now of course realise that I should have paid more attention."

In respect of opening the file in the name of Mrs K alone, the Respondent stated:

> "I have never thought this was incorrect and I did not stop to consider that opening the file in the name of [Mrs K] alone was wrong or untoward. It never occurred to me that this was a way of circumventing the AML requirements - it was expediency because of the lack of visual ID for Mr [K]. I was however fully intending to add him as the client when I got hold of a copy of his passport."

52.3 The Respondent further stated:

> "... in the corporate world I am so used to taking and acting on verbal instructions - both from the client and others acting on the client's behalf... I know you mentioned warning bells should have sounded about the speed of the transaction... I have in past years spent many run ups to Christmas being absolutely frantic... trying to get the deal completed before the break... It therefore seemed quite normal for me to be asked to get it done quickly..."

> "Yes I should have been more alert to the fact that the land certificate showed the Bristol address whereas I had ID for the London address - the explanation seemed to be at the time quite plausible."

52.4 Mr Goodwin submitted that allegation 1.1 was made out and that it was a serious failure to comply with the Money Laundering Regulations but in the context of the other allegations, the Tribunal might not regard it as the most serious of all the allegations in the case.

52.5 The Tribunal considered the submissions for the Applicant, the evidence and the explanations given by the Respondent including in her Answer, her detailed Response to the FI Report and the supplemental report from the firm and relevant statements in her communications with the Applicant, Mr Goodwin and the Tribunal. The Tribunal noted that the facts in this matter were not disputed. The Respondent did not carry out identity checks for the purported Mr K. She checked the documents for Mrs K. Taken in isolation she could be forgiven for failing to spot at least initially the discrepancy in numbering on Mrs K's passport but the bills the Respondent had been presented with were very odd and there was a discrepancy in the clients' address. A solicitor could be expected to be on alert because of all the suspicious factors and this would lead them to check items such as the passport and bills very carefully. The need for speed which Mr and Mrs K urged on the Respondent was not considered by the Tribunal to be an excuse for failing to carry out the proper checks. Furthermore it was clear that both

Mr and Mrs K were the Respondent's clients but she treated Mrs K only as a client because she was the one for whom there was some identification evidence. In her Response, the Respondent stated that she was truly sorry if she did not examine the utility bills more closely and that it might have been because she was so preoccupied and stressed about a forthcoming Chancery action in which she and her personal partner were involved that it did not occur to her to scrutinise them in a way that she perhaps should have done. The Tribunal noted that the Respondent said that she had told her secretary that she had not seen Mrs K at her home but the Tribunal did not consider that anything turned on this in respect of the allegation as a whole. The Respondent also asserted in her email to Mr Goodwin of 27 January 2015 that she was not alone in failing to carry out client identity checks in an adequate manner if that was what is being alleged but the Tribunal rejected this attempt to spread the blame to others. The Tribunal found that the Respondent had failed to carry out personal identity checks and required money laundering checks on her clients. The Tribunal found the breaches relating to maintaining public trust (Principle 6), running her business and carrying out her role effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8) and protecting client money and assets (Principle 10) as well as the breaches of the Money Laundering Regulations alleged in allegation 1.1 proved to the required standard on the evidence.

53. Allegation 1.2 - She [the Respondent] created and improperly signed a false letter of authority dated 22 December 2011, purporting the same to have been signed by Mr and Mrs K, in breach of Principles 2 and 6 of the SRA Principles 2011.

53.1 For the Applicant, Mr Goodwin relied on the facts as set out in the Rule 5 Statement and the FI Report including the contents of the supplemental report from the firm on its investigation dated 23 March 2012 where it was set out that the authority letter with the clients' signatures was not in the file on 13 January 2012 and Mr Goodwin submitted that was because no such letter existed. The Respondent created a false document over the weekend and inserted it in the file. Mr Goodwin referred the Tribunal to the Response of the Respondent to those reports which included:

> "I was satisfied I had the [Ks'] verbal authority to sign and exchange the contract on their behalf. At the meeting in Bushey the [Ks] confirmed that they wanted me to go ahead and get the loan made without delay. They said (sic) would sign anything else that needed to be signed in order to get the loan made before Christmas. This was subsequently backed up by the fact that I received their written instructions as to where to remit the monies. It is inconceivable I would have signed the contract if I had not been utterly confident I had the requisite authority to do so. On the Thursday evening I did however draft a short letter of authority for the [Ks] to sign and posted it to them on my way home. A copy of the letter was left in the file. I did this in order to compete (sic) the file but in view of the Christmas post I was not expecting it back until some time in the new year as the [Ks] said they were going to be away. I was relaxed about this as I knew I had exchanged contracts with their full approval. I thought no more about this letter until I took the file home, with the consent of [Mr RB], over the weekend of 14/15 January to enable me to finalise my note to him.

> To say the balance of my mind was disturbed that weekend was an understatement - we had just settled the Chancery proceedings on very onerous terms since we were being ordered to sell our London house, our financial position was precarious and then the matter with the [Ks] exploded. I had not slept for days and was bordering on hysterical. I was in a state of near collapse. I cannot now honestly remember signing the letter of authority as my mind is a complete blank about it but I must accept that I did. It was however without any intention to deceive. I was probably so terrified of what was happening and scared [Mr RB] would accuse me of exchanging without proper written authority (which of course he has tried to do) that I thought I needed something for the file. I must have just panicked. I am sure there are many solicitors who prepare file notes after the event to cover themselves. There was never any intention for a third party to rely on it or to deceive anyone since, as I have said, I already had the requisite verbal authority and a written authority was not necessary. The contract had of course already been exchanged and part performed some three weeks earlier and nothing I did altered in anyway the effect of the contract that was signed before Christmas. There was no fraud or fraudulent intent on my part. I do not believe anyone outside [the firm] saw the letter and certainly no one relied on it. It was an internal document only. In addition I do not believe I had the necessary mental capacity at the time to tell right from wrong. All I wanted to do was to make the file as complete as possible from an internal housekeeping point of view. This I acknowledge was misguided in hindsight but many solicitors I am sure have done the same to make their files look complete. You must however appreciate the very hostile atmosphere engendered by those at [the firm] and... in particular in the days following Wednesday 11 January. I was isolated and distraught and being accused of something I had not knowingly done."

Mr Goodwin explained that the reference to the Chancery proceedings involved the Respondent's personal partner who had been before the Tribunal and as a consequence of that he had to deal with Chancery proceedings. (Earlier in her response, the Respondent referred to the litigation where sale orders were being pursued to settle her partner's debts.) In her email of 27 January 2015 to Mr Goodwin, the Respondent stated;

> Allegations [1.2] and [1.3]. I have explained fully why this happened. I had impaired mental capacity at the time to and absolutely no intention to commit an offence. I am very sorry this happened.

53.2 The Tribunal considered the submissions for the Applicant, the evidence and the explanations given by the Respondent including in her Answer, her detailed Response to the FI Report and the supplemental report from the firm and relevant statements in her communications with the Applicant, Mr Goodwin and the Tribunal. The Respondent did not know that her clients were fraudsters and she did not need written authority from her clients to sign the contract on their behalf although she would have been prudent to have obtained it and said that she was seeking to do so. However the crucial fact was that the Respondent admitted both to the police and in her Response that she had created the false letter with the false signatures over a weekend and then placed it on the file. She compared this to making an attendance note after the event but the Tribunal considered what she had done to be a completely different matter.

She had been asked about what authority she had and she then created a written authority over the weekend. The Tribunal noted that while the Respondent described what she had done as "internal housekeeping" she also said that she was probably scared that she would be accused of exchanging without proper authority and thought that she needed something for the file; her intention was that third parties would rely on it as evidence of that authority and the Tribunal found that the document had been created with the intention of deceiving senior partners in the firm. The Tribunal found that in creating the document with the false signatures the Respondent had failed to act with integrity in breach of Principle 2 and had not maintained the trust the public placed in her and the provision of legal services in breach of Principle 6. The Tribunal found allegation 1.2 proved on the evidence to the required standard.

54. Allegation of dishonesty in respect of allegations 1.2

54.1 Mr Goodwin referred the Tribunal to the combined test for dishonesty set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12, where it had been said:

> "...there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. I will term this "the combined test"."

54.2 Mr Goodwin submitted in respect of allegation 1.2 that creating a document and forging signatures which purported to be made by clients when they had not been, satisfied the objective test for dishonesty. He further submitted that the Respondent's conduct in created the document and placing it in the file showed that she knew that she was being dishonest by that standard. Solicitors do not create documents with false signatures. Mr Goodwin submitted that it was not necessary for him to establish motive but the reason for the creation of the false document was, according to the Respondent, to make the file as complete as possible from an internal housekeeping point of view. Mr Goodwin submitted that this meant that if it was reviewed by someone in the firm or by the Applicant it would convince them that the authority was genuine but in fact the document was false. The Respondent created a false document whether it was required or not and that was dishonest. It was one thing to create a file note to reflect a conversation or an event and place it on a file where the conversation or event had taken place but that and what the Respondent did were completely different things. Mr Goodwin then referred the Tribunal to subsequent parts of the Response. The Respondent stated:

> "When I got home and calmed down a little I realised that I needed to explain about the letter as I wanted immediately to set the record straight. I was expecting to receive the written up notes of the meeting which would enable me to correct what I had said but they never arrived. Instead less than 48 hours later my consultancy was terminated with no right of appeal or any attempt by [the firm] to clarify anything I had said in the meeting on Tuesday.
>
> Even thinking about things now I cannot really comprehend why I signed the letter but all I know is that I never ever intended to deceive anyone or to act in

> a fraudulent manner. As the [Applicant] is aware I accepted a caution from the police for this forged document. The letter from the [Applicant] dated 12 December incorrectly refers to "on or before 23 December". This is not the date shown in the actual caution itself and therefore what the [Applicant] alleges is misleading. The wording is also incorrect on the caution itself since I am sure no one relied on it and I certainly did not induce anyone to do or not do some act to their prejudice. As I have said earlier I believe no one other than [Mr RB] and [Mr RG-C, another partner] saw the letter of authority and they certainly did not rely on it or were induced to do or not do some act. It is unlikely a copy of the letter was sent to [Mr NP, solicitor at RB LLP] or his client [BW] as alleged in the wording of the caution."

54.3 Mr Goodwin submitted that the Tribunal could be sure to the required standard that the allegation of dishonesty had been made out in respect of allegation 1.2.

54.4 The Tribunal considered the allegation of dishonesty according to the two limbed test in the case of Twinsectra. It found that there was no doubt that reasonable and honest people would consider it to be dishonest that a solicitor created a false document and completed on it signatures which purported to be those of her clients and were not. The Tribunal then had to consider whether the Respondent knew what she was doing to be dishonest by those standards. The Respondent created the document over a weekend. Her stated objective was to make the file as complete as possible and the Tribunal found that her purpose was to deceive at least the partners in the firm because she was under scrutiny. She had drawn an analogy with attendance/file notes but as stated above the Tribunal found this to be a spurious analogy. The Respondent asserted that the balance of her mind was disturbed at the time she created the document but there was no medical evidence or other evidence to support that save her own bald statement to that effect. There was no indication that she saw a psychiatrist at around this time or any record that she was receiving treatment for mental illness of any sort at the material time or thereafter. The Tribunal found that by her actions the Respondent had shown that she knew that what she was doing in creating a false document with the false signatures was dishonest and dishonesty was therefore prove to the required standard in respect of allegation 1.2.

55. Allegation 1.3 - On 20 November 2012 she [the Respondent] was cautioned for an offence contrary to the Forgery and Counterfeiting Act 1981, thereby breaching Principles 1, 2 and 6 of the SRA Principles 2011.

55.1 For the Applicant, Mr Goodwin submitted that allegation 1.3 was linked to allegation 1.2 and he referred the Tribunal to the caution which stated:

> "Make a false instrument with intent it be accepted as genuine – Forgery and Counterfeiting Act 1981
>
> On or before 31 January 2012 at Within (sic) the jurisdiction of the CCC, made an instrument, namely a letter of authority to act on behalf of Mr and Mrs [K] which was false in that it purported that it should be signed by these named persons in the form in which it was made and signed when in fact and in truth it was not made by those persons in that form, with the intention that you or another should use the same to induce [Mr RB], [Mr BW], [Mr NP] or

> another to accept it as genuine and by reason of so accepting it to do or not to do some act to his own or another person's prejudice.
>
> CONTRARY TO SECTIONS 1 AND 6 OF THE FORGERY AND COUNTERFEITING ACT 1981"

Mr Goodwin submitted that the Respondent challenged the wording of the caution but that did not excuse the dishonest act of creating the document, forging signatures and placing the document on the file. Furthermore deceit was not alleged by the Applicant. Motive was not required but the reason why the Respondent did what she did was to make the file look as complete as possible. Mr Goodwin referred the Tribunal to the Response where, the Respondent stated:

> "I could easily have refused to have accepted the caution but I simply could not stand the stress and uncertainty of a delay of many months before the matter was heard in court even though I was confident I would be found not guilty. The financial cost would also have been prohibitive. Evidence would, I know, have shown that I did not have the requisite mental capacity at the time and also that this document had not been relied on by anyone. My acceptance of the caution should therefore in no way be taken as an admission of my guilt. It is something I deeply regret and I have never done anything like it before in my life. My mental state at the time was so impaired I literally was not in control of my actions."

Mr Goodwin submitted that the Respondent accepted the caution and it could only be administered against the background that she accepted that she was guilty of the offence or the police would have charged her if it was deemed the appropriate way forward. Also if the Respondent believed that she did nothing wrong she should not have accepted the caution. Regarding her mental state the Tribunal only had her word for it; there was no medical evidence for example from a consultant psychiatrist that at the time she was suffering from a condition that impaired her ability to appreciate the difference between right and wrong. There was no evidence that she did not recognise dishonesty when she created the false document. For a solicitor to be cautioned for an offence, was most serious and this was an offence of dishonesty. In spite of her protestations now regarding the offence it was admitted and Mr Goodwin rejected the suggestion that the caution should not be taken as an admission of guilt.

55.2 The Tribunal considered the submissions for the Applicant, the evidence and the explanations given by the Respondent including in her Answer, her detailed Response to the FI Report and the supplemental report from the firm and relevant statements in her communications with the Applicant, Mr Goodwin and the Tribunal. This allegation flowed from allegation 1.2. The same facts gave rise to both allegations but the significance of the caution for the Tribunal proceedings was that it constituted an admission by the Respondent that she had committed a criminal offence. She herself said in her Response that she could easily have refused to accept the caution but did so because she could not stand the stress and uncertainty of a delay before the matter came to court and that the financial cost would have been prohibitive. For a solicitor to accept a caution inevitably involved failure to uphold the rule of law and the proper administration of justice and thereby a breach of Principle 1, as well as a failure to act with integrity (Principle 2) and had an adverse impact on the trust the public

maintained in her and the provision of legal services (Principle 6). The Tribunal therefore found allegation 1.3 proved to the required standard on the evidence.

56. Allegation of dishonesty in respect of allegation 1.3

56.1 For the Applicant, in respect of allegation 1.3 it was set out in the Rule 5 Statement that the caution related to an offence of dishonesty. In accepting the caution the Respondent would have accepted that her conduct in creating the letter of authority, forging the clients' signatures and purporting the letter of authority to have been signed by Mr and Mrs K so that it was false was dishonest. Mr Goodwin described allegation 1.3 as parasitic upon allegation 1.2.

56.2 Again the Tribunal employed the test set out in the case Twinsectra in determining dishonesty. Reasonable and honest people would consider the offence admitted in accepting the caution to be dishonest. The Respondent thereby accepted the facts of what she had done and admitted the criminal offence for which she was cautioned which was one of dishonesty. The Tribunal found dishonesty proved to the required standard in respect of application 1.3.

57. Allegation 1.4 - She [the Respondent] failed to co-operate adequately, or at all, with the SRA, in breach of Principle 7 of the SRA Principles 2011 and Outcome 10.6 of the SRA Code of Conduct 2011.

57.1 For the Applicant, Mr Goodwin submitted that the Respondent had obligations and responsibilities as a member of the profession which was a privilege but which also carried responsibilities, one of which was the obligation to co-operate with the Applicant. Mr Goodwin clarified that the allegation of non-cooperation was limited to the IO's attempts to interview the Respondent as set out in the FI Report; it would not be fair to go further. He submitted that the Respondent had failed to do this adequately or at all and referred to the FI Report and the attempts to interview the Respondent which are set out in the background to this judgment. He submitted that none of the matters raised by the Respondent should have prevented her from meeting with the IO to assist as best she could in the investigation. Regulation could only be undertaken with the cooperation of members of the profession. Quite often solicitors came before the Tribunal who faced a police investigation or who had been charged. The Tribunal might be prevailed upon to proceed in any event or if the trial was close it might decide to defer the Tribunal hearing but the Respondent should have co-operated with the IO and met with him; he was carrying out an investigation for the Applicant and not for the police. Mr Goodwin did not know what the Respondent's data subject access request was to the Applicant but it was dealt with in July 2012 and the Respondent had been provided with a copy of the firm's report. The IO was seeking to talk to her about it and she did not see fit to do so. Mr Goodwin accepted that ultimately the Applicant had received a detailed response and that the Respondent had not held back but he submitted that this was after the preparation of the FI Report. He submitted further that the Respondent did not know the full extent of the IO's enquiries and she could have met with him and answered him if she could do so. If the Respondent had felt at some point that the IO was straying into areas of possible police enquiry she could have said so but at least she would have co-operated to some extent.

57.2 The Tribunal enquired of Mr Goodwin about what the Respondent had described as the long delay of 19 months between the submission of her reply and her being informed of the decision to refer her case to the Tribunal. Mr Goodwin stated that the Respondent might well be right; there might be reasons for the lapse of time but the Respondent was required to co-operate with the Applicant. Mr Goodwin set out the timescale of the Applicant's investigation as follows: the IO had started the investigation in April 2012 and produced the FI Report in September 2012. The Applicant had written to the Respondent in December 2012 seeking an explanation and she had replied on 31 December 2012. From June 2012 the Applicant was dealing with the Respondent's data access request and Mr Goodwin anticipated this prevented the Applicant dealing with the case expeditiously and it was also chasing the police regarding any criminal action. The officer involved had left the police force and there had been attempts to obtain the caution. It was a matter for the Tribunal to determine if the time had been reasonable but Mr Goodwin submitted that this did not touch on the allegations.

57.3 In her Response to the FI Report and the supplemental report of the firm, the Respondent dealt with the attempts by the Applicant to interview her. Her comments included:

> "I received a call on my mobile from Mr Dhanda out of the blue on 7 June 2012 and I had no idea who he was or how he had obtained my mobile number Mr Dhanda offered no proof of identity or explanation for his call other than to say he wanted to interview me about as yet unspecified matters. It was very difficult to understand what Mr Dhanda was saying but it seemed he was referring to the [firm's] report submitted to the [Applicant]. It was only on 12 June (some seven days after Mr Dhanda's initial contact) that I received an e-mail from Ms [C, the supervisor} at the [Applicant] saying Mr Dhanda would be contacting me so when he rang on 7 June I had no way of knowing who he was.
>
> Ms [C] wrote to me on 18 May referring to the [firm's] report. It was therefore not unreasonable of me to request a copy of that report and related correspondence before I agreed to see Mr Dhanda. I then encountered a degree of resistance from both the [Applicant] and [the firm] as to whether the [firm's] report would be made available to me as apparently the [Applicant] had originally advised [the firm] not to disclose anything to me at that time. In the end I did receive a copy on 12 June.
>
> My request for the related correspondence was treated by the [Applicant] as a data subject access request under the Data Protection Act. Again I encountered resistance from the [Applicant] as to disclosure of information which they were purporting to withhold under section 31 of the Data Protection Act. Mr [S], the Information Compliance Manager, refused to identify what documents were not being provided to me other than to say they were "e-mails, reports and telephone attendance notes" which "if disclosed would be likely to prejudice the [Applicant's] investigation". I have still received no satisfactory answer as to why the disclosure of these documents is deemed so prejudicial. I am being denied full disclosure which I believe is in breach of all the rules of natural justice.

> I had also submitted a data subject access request to [the firm] on 17 May. I was likewise experiencing problems with [the firm] as to their disclosures and I had correspondence with [DC], the solicitors for [the firm] during the summer and autumn of 2012, the last letter from [DC] being dated 27 November...
>
> I e-mailed Mr Dhanda on 25 September in response to his message on my mobile to explain the current position. A copy of that e-mail is annexed to the FI Report as F13 and clearly sets out the position. I received no acknowledgement from Mr Dhanda. The [Applicant] were therefore fully aware of why I was not yet in a position to be interviewed.
>
> The [Applicant] must accept that I could not in all fairness respond to the [Applicant's] allegations until the police investigation had been concluded since to do so could have adversely prejudiced my defence to any allegations made by the police. I understood that there was at the time an exchange of information between the police and the [Applicant] which would have made my position intolerable and untenable if I had been forced to deal with the [Applicant] at the same time.
>
> As it happens, on 20 November the police informed me that they were dropping the fraud investigation against me. I was therefore in a position to deal with the allegations raised by the [Applicant]. It should be noted that I immediately contacted the [Applicant] on 23 November (only three days after I had been cleared by the police). A copy of my subsequent e-mail exchange with Ms [C] and Mr [S] is attached. It sets out why I was still not satisfied that information was being withheld from me by the [Applicant] under section 31. As will be apparent, the e-mail exchange has not been helpful and there seems to have been an extreme reluctance on the part of the [Applicant] to be open with me. However at last I received the e-mail from [S] dated 17 December which goes some way towards explaining the nature of the withheld information. I am however waiting for a reply to my e-mail of 20 December asking yet again why the disclosure is deemed so prejudicial given the rather prosaic nature of the documents being withheld."

57.4 Mr Goodwin submitted that the report from the firm was disclosed to the Respondent. The Respondent also stated:

> "Absolutely no attempt has ever been made to interview me and no contact has been made by Mr Dhanda since my e-mail dated 23 November. As the police investigation has now been dropped I am now in a position to be interviewed and I indicated in that e-mail that I was ready and willing to respond to the allegations made against me. I note that the FI Report was dated 28 September and was drafted by Mr Dhanda. It seems a decision was made to instruct Mr Dhanda to prepare the report when the [Applicant] was fully aware that I was not able to be interviewed. Therefore it is incorrect for the [Applicant] now to maintain that it has not been possible to interview me. This assertion simply distorts the reality of the situation.

> I am concerned the FI Report has therefore been prematurely prepared and is based upon incomplete facts and without any input from me. At no stage has the [Applicant] ever told me that it did not accept that I could wait until the police investigation was over.
>
> I therefore absolutely refute the allegations that I have failed to achieve outcome 10.06 in that I have failed fully to cooperate with the [Applicant] and that I have breached Principle 7. I have responded to every communication from the [Applicant] promptly (and in most cases by return) and I have kept the [Applicant] informed at all times. The [Applicant] has arbitrarily set a timetable without reference to me or to my legitimate concerns and now accuses me of being in breach of Principle 7. Surely Principle 7 should work both ways and the [Applicant] should have a corresponding duty to cooperate with me. As the e-mails disclosed above clearly demonstrate I have encountered resistance in disclosing information, the setting of unreasonable/arbitrary deadlines and general unhelpfulness in most of my dealings in the past few months with the [Applicant]..."

Mr Goodwin submitted that this was a detailed response to the FI Report and that he had served notices to admit facts and there had been no counter notices. The Respondent was in effect saying that the FI Report was factually correct although the Applicant's interpretation of it might not be. In her email of 27 January 2015 to Mr Goodwin, the Respondent stated:

> "Allegation [1.4]. This is utterly untrue. The [Applicant] knew my position and never objected to it. How they can now say I failed to co-operate defies belief and yet this allegation is still made against me. Despite my very full explanation you have just repeated the [Applicant's] conclusions which are simply not true."

57.5 Mr Goodwin also addressed the comments made by the Respondent regarding the timescale for delivery of the FI Report which was sent in a letter dated 12 December 2012 postmarked 13 December and received on 15 December with a reply required to the allegations by 27 December 2012. The Respondent made the point that the FI Report was dated 28 September 2012 and had been available for almost three months before it was sent to her. She was advised that she could ask for an extension of time and when she did so by e-mail on 21 December 2012 received an out of office message. Mr Goodwin submitted that the Applicant had a huge amount of business to deal with and while it was not an excuse for lapse of time, September to December was not an unreasonable time for the FI Report to be dispatched in the context of the investigation. Mr Goodwin also submitted that after the IO completed his work on the FI Report it was submitted to a different department of the Applicant and Mr Goodwin pointed out to the Tribunal that the letter sent on 12 December 2012 was from Ms C a supervisor in the Supervision, Risks and Standards department. That part of the Applicant considered the FI Report and drafted a careful letter to formalise allegations and seek an explanation; that process might form part of an explanation for the lapse of time in this case.

57.6 Mr Goodwin also drew the attention of the Tribunal to its Practice Direction number 5 in which it was set out that the Tribunal directed for the avoidance of doubt that, in appropriate cases where a respondent denied some or all of the allegations against him (regardless of whether it was alleged that he had been dishonest) and/or disputed material facts, and did not give evidence or submit to cross-examination, the Tribunal should be entitled to take into account the position that the Respondent had chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This direction applied regardless of the fact that the Respondent might have provided a written signed statement to the Tribunal. Mr Goodwin submitted that the position in this case was akin to someone who had chosen to attend and not give evidence.

57.7 The Tribunal considered the submissions for the Applicant, the evidence and the explanations given by the Respondent including in her Answer, her detailed Response to the FI Report and the supplemental report from the firm and relevant statements in her communications with the Applicant, Mr Goodwin and the Tribunal. The Tribunal noted that within five weeks of the police dropping its enquiries on 20 November 2012, the Respondent sent a 20 page explanation of her actions dated 31 December 2012. While the Tribunal considered it of great importance for solicitors to cooperate to the full with their regulator, in the particular circumstances where the Respondent was at the time subject to a criminal investigation with the possibility of criminal charges being laid against her the Tribunal did not think that it was unreasonable of her to say that she would not meet with the Applicant until after the police investigation was complete. Accordingly the Tribunal found allegation 1.4 was not proved to the required standard on the evidence.

58. Allegation 1.5 - She [the Respondent] facilitated, permitted or acquiesced in money being paid into and out of the firm's client account when there was no underlying legal transaction(s) in breach of note (ix) to Rule 15 of the Solicitors Accounts Rules 1998 and Rule 1.02, 1.03 and 1.06 of the Solicitors Code of Conduct 2007.

58.1 For the Applicant, Mr Goodwin relied on note (ix) to Rule 15 which stated:

> "In the case of Wood and Burdett (case number 8669/2002 filed on 13 January 2004), the Solicitors' Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account..."

A solicitor should only allow payment in and out of client account in respect of legitimate legal transactions that they were involved in. Mr Goodwin relied on the two matters which were exemplified in the FI Report INC and Dr ZBM, the facts relating to which are set out in the background to this judgment. It was set out in the Rule 5 Statement that in respect of INC there was no evidence of any legal transaction having been conducted or any advice given on the client file. In respect of Dr ZBM there was no information on the file to evidence the basis on which the letter was signed by Mr L-C or his connection with this client matter and there was no evidence of any legal transaction having been conducted or any advice given on the client file.

58.2 In her Response to the FI Report and the supplemental report of the firm, the Respondent dealt with the cases of INC and Dr ZBM as follows:

> "[INC] wished to change solicitors and accordingly a new file was opened. The monies being held by [K Solicitors] were then transferred on the client's instructions to the [firm's] client account. It was the intention that [the firm] would be instructed to act for [INC] on a number of commercial transactions and [INC] was certainly not looking to [the firm] to provide any form of banking services. As it turned out I understand [INC] encountered a number of delays in the transactions it was pursuing and that is the reason why no time has been recorded on this file.
>
> These two payments to [HAR] were made on the client's instructions and I did not seek further clarification for these instructions nor did I see it my place to do so.
>
> My secretary ... prepared and amended a number of draft documents both for [INC]. I checked these draft documents but I did not record my time as it was more an administrative service rather than actual legal work. It was however agreed with [INC] that a bill should be rendered for £800 plus VAT for this work.
>
> I understand that [INC] had agreed to pay legal fees on behalf of a Michelle Henry. She is not me, no relation of mine and I have never met her or corresponded with her. It is pure coincidence she has the same surname as me. I was merely carrying out the client's instructions.
>
> [L-C] was at the time the sole Director of [INC] and whose instructions I accepted."

58.3 Regarding Dr ZBM, the Respondent stated:

> "Dr [ZBM] also wished to change solicitors and a file was opened in his name. The money received from [K Solicitors] was in respect of stamp duty, Land Registry fees and Scottish solicitor's fees for an ongoing property development in Scotland. The amount of stamp duty had not yet been adjudicated and once it had been the money was remitted to Dr [ZBM's] Scottish solicitors. It was the intention of Dr [ZBM] to ask [the firm] to step into the shoes of [K Solicitors] in order to oversee and supervise the services provided by the Scottish solicitors and to advise on any English law aspects and it was anticipated [the firm's] services would be required in a number of areas. It cannot possibly be said [the firm] was providing a banking service when all it did was to hold money representing as yet undetermined stamp duty and other legal fees.
>
> I understand [L-C] has known Dr [ZBM] for many years and was providing advice to Dr [ZBM] and his family at the time."

58.4 The Respondent stated in respect of both transactions:

> "...I can categorically state I was not providing banking facilities and I was not aware that [the firm] was providing banking facilities through its client account. The money was being held in both instances for legitimate legal transactions and had been received from another firm of solicitors who I believe had likewise been holding the money for the same legitimate legal transactions.
>
> In any event nobody at [the firm] – or the auditors – alerted me to the fact that the holding and paying out of these monies may constitute the provision of banking facilities"

The Respondent went on to cast blame on the firm for not picking up that client monies were being held and said:

> "It was not my responsibility and I deny knowingly breaching Rule 15 Note (ix)."

In her email of 27 January 2015 to Mr Goodwin, the Respondent stated:

> Allegation [1.5]. I had no signing powers over [the firm's] client account and I cannot see how I can be accused of facilitating, permitting or acquiescing in the way alleged. This again was down to [the firm] and its inadequate systems.

58.5 Mr Goodwin submitted that in the case of INC, the Respondent conceded that the work done by her secretary was more an administrative service than legal work. In respect of Dr ZBM, Mr Goodwin submitted that the Respondent relied on the role of Mr L-C but he was not connected with the firm. Mr Goodwin repeated his submission that no evidence of underlying legal transactions had been provided to justify the movement in and out a client account in these matters. He accepted that there was a reference to an adjudication for stamp duty purposes but the Respondent simply said that she was holding the money.

58.6 The Tribunal considered the submissions for the Applicant, the evidence and the explanations given by the Respondent including in her Answer, her detailed Response to the FI Report and the supplemental report from the firm and relevant statements in her communications with the Applicant, Mr Goodwin and the Tribunal. In the case of INC, the sum of £97,119.17 was received into the client account of the firm on 5 October 2010 and the following day £38,400 of that sum was paid out to someone with the same name as the Respondent. The Tribunal was not in a position to make any findings of fact about that individual but nothing turned on that. Just a few days later a further payment of £16,307 was made to that same individual, both payments being referenced as fees. There were then two payments of 1 March and 29 March 2011 to an account in Switzerland for another individual and a bill of costs for reviewing commercial agreements and a transfer of £960 of the balance to office account on 23 March 2011. No time was recorded on the file and there was no evidence of the firm doing any work save the word of the Respondent who had not come to the Tribunal to give an account of herself. The Tribunal did not consider that the fees which were referenced on the file bore any relation to the work which the Respondent's secretary was said to be doing by way of administration. The Tribunal

could find no evidence that there was any underlying legal work to justify the receipt of payment out of funds in relation to INC. In respect of Dr ZBM, on 27 August 2010 £83,623.58 was received from K Solicitors and on 7 June 2011 £80,100 was paid to another firm for "SDLT and Land Registry Fees". Again the Tribunal noted that there was no evidence of any legal transaction having been conducted or any advice given on the client file. The Respondent's explanations in respect of both these matters were unsupported by any evidence. In the case of INC, the Respondent said that she had accepted instructions from her personal partner at K Solicitors who was the sole director of INC and in respect of Dr ZMB she again relied on his role at another firm K Solicitors and the fact that she stated he was providing advice to this individual and his family at the time. The Tribunal found that explanation could not justify the movement of monies in and out of her firm's client account when no legal work was being done by her firm and it rejected her attempts to blame the firm for what had happened; she was a senior and experienced solicitor and the responsibility was hers. Accordingly the Tribunal found proved to the required standard that the Respondent had facilitated, permitted or acquiesced in money being paid into and out of the firm's client account when there was no underlying legal transaction in breach of note (ix) in respect of the dealings with money relating to INC and Dr ZBM. The Tribunal then had to consider whether this conduct constituted the alleged breaches of the Solicitors Code of Conduct 2007. The Tribunal was satisfied that behaving in this way constituted a failure to act with integrity (Rule 1.02) and would undermine public confidence in the Respondent and the legal profession (Rule 1.06). It was not however satisfied that it had been proved to the required standard that the Respondent had compromised her independence (Rule 1.03) by behaving in this way. The Tribunal therefore found allegation 1.5 proved to the required standard in respect of the breaches of note (ix) and Rules 1.02 and 1.06 of the Code but not Rule 1.03.

Previous Disciplinary Matters

59. None

Mitigation

60. The Respondent was not present but the Tribunal had regard to her detailed Response dated 31 December 2012 which might be said to form her position regarding the allegations. This included references to the personal stress she was suffering because of the Chancery litigation which she and her personal partner were involved in at the material time.

Sanction

61. The Tribunal had regard to its Guidance Notes on Sanction and assessed the seriousness of the Respondent's misconduct. The most serious of the allegations related to creating and improperly signing a false letter of authority for which she had accepted a caution by the police. Dishonesty had been found proved in respect of this allegation. The Tribunal considered that allegations 1.2 and 1.3 were part and parcel of the same misconduct. The Respondent was fully culpable for her own actions in respect of all the allegations which had been found proved. Her conduct in creating the document over a weekend was clearly planned rather than spontaneous. She had acted in breach of a position of trust towards the firm. The Respondent was an

experienced solicitor who stated that she had held a senior position elsewhere before becoming a consultant at the firm. In terms of harm, the impact of her misconduct and her admitted criminal and dishonest behaviour would have a serious effect upon the reputation of the profession as would her approach to the identity checks for Mr and Mrs K which had in effect facilitated a mortgage fraud. There were several aggravating factors; dishonesty had been proved as had a criminal offence; the misconduct was deliberate and calculated and in terms of the false document was all about concealment. In terms of general mitigation, the Respondent had never denied the facts of the case but she had tried to blame others for what she had done. In respect of the false document her motivation had been to cover up what she thought might be perceived as her failures. There was deception of her by another party but her misconduct did not result from it; indeed if she had carried out the identity checks properly their dishonest purpose might have been thwarted. Her act of dishonesty was a discrete one of brief duration. There had been no attempt to make good what she had done and rather than making unequivocal admissions she had engaged in a lengthy correspondence with Mr Goodwin about her stance in respect of the allegations. The Tribunal considered that the Respondent had shown no insight to all into her misconduct. The Tribunal's Guidance Notes on Sanction stated that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. Having regard to the seriousness of the conduct particularly the admitted criminal offence, the Tribunal had regard to the purposes of sanction and considered that nothing short of suspension or strike off would be sufficient to protect the public and maintain the reputation of the profession. There was no evidence of truly compelling personal mitigation such as would justify an indefinite suspension. The Tribunal did not find there to be any exceptional circumstances such as envisaged in the case of Sharma v Solicitors Regulation Authority [2012] EWHC 3176 (Admin). The Tribunal determined that the Respondent should be struck off the Roll of Solicitors.

Costs

62. For the Applicant, Mr Goodwin had served a schedule of costs totalling £32,676.58 upon the Respondent attached to his e-mail of 1 May 2012. Mr Goodwin submitted that the Applicant had proved the majority of its allegations and was therefore entitled to an award in its favour. He reminded the Tribunal an award of costs was not an additional penalty but to compensate the Applicant for costs incurred. He submitted that his costs schedule was reasonable and proper in the circumstances of the case however the time taken for the Tribunal hearing would be somewhat less than his estimate. He also pointed out to the Tribunal that he had undertaken a case management hearing that day and so his travel time and related costs should be apportioned and reduced by 50%. He drew the attention of the Tribunal to observations made by the Respondent about the costs of the forensic investigation which amounted to £17,767.78. In her e-mail dated 4 May 2015 about costs, the Respondent had noted that the investigation costs schedule was prepared in October 2014 and said she found it unacceptable that she had only seen it a day or so before the hearing. Mr Goodwin anticipated that it would have been sent to her with the papers at the beginning of the case but in any event she had now had the opportunity to consider and challenge it. In order to assist the Tribunal, the IO was recalled to the

witness box to clarify how he had arrived at the time analysis. He also confirmed that the overall time spent on the investigation was accurately represented on the costs schedule and pointed out that at the time he undertook the work it was the practice of the Applicant to include under the heading of the FI Report time spent referencing files and any additional work undertaken following the Report which explained the number of hours allocated to the Report; it went beyond drafting time. Mr Goodwin also clarified that when a firm was visited for the purposes of an investigation, any work done at the firm would be included in the costs claim of the investigation in respect of the individual respondent but he pointed out that no problems were identified at the particular firm leading to any proceedings.

63. As to enforceability of any costs order, Mr Goodwin referred to his e-mail of 21 April 2015 when he had drawn to the attention of the Respondent the need to provide evidence of her financial means if she wished to assert impecuniosity, a warning repeated in his email sending her the cost schedule. The Tribunal's letter dated 2 December 2014 notifying the date of hearing contained a similar warning. Mr Goodwin submitted that the Respondent had had the time and ability to send an e-mail about the quantum of costs raising various queries and challenges but had made no observations about her means. Mr Goodwin had sent her a Personal Financial Statement on 1 May 2015 but she had not chosen to complete and return it. She had therefore had three opportunities to provide evidence if she was asserting impecuniosity but she had not done so. If an order was made which was not enforceable without leave of the Tribunal the Applicant would be reliant on the Respondent informing the Applicant of any changes in circumstances. The Applicant had undertaken a Land Registry search in respect of the property in which the Respondent lived which revealed a 2013 restriction in her name. It was understood that her partner had been made bankrupt following proceedings at the Tribunal and the position of the trustee in bankruptcy in respect of the property was not known. If an enforceable order was made and upon enquiry the Applicant discovered that there were issues with her means no doubt these would be considered sympathetically. She had stated in the papers that she could not afford representation but Mr Goodwin submitted that the Tribunal was entitled in the absence of any evidence about her means to deal with the costs on the basis that she was not unable to meet them or was not impecunious.

64. The Tribunal summarily assessed the costs having regard to Mr Goodwin's submissions, the evidence of Mr Dhanda and the Respondent's representations in her email of 4 May 2015 to Mr Goodwin. It considered that that part of the claim which related to Mr Goodwin's time was reasonable subject to the points he had already drawn to the Tribunal's attention about the time of the hearing and the apportionment of his travel costs and time. The Tribunal considered that the costs for the investigation were somewhat high but accepted that a number of files had been examined and additional issues to those originally identified were pursued. The Tribunal did not feel that it was appropriate for the Respondent to bear all the costs of the investigation as the Applicant had in accordance with its usual practice looked at the firm generally. The Tribunal also took into account that one of the allegations had not been proven and that there was one aspect of another which was not found proved. The Tribunal assessed costs at £23,500. The Tribunal was conscious that in striking off the Respondent it had removed her ability to practise as a solicitor but she had been given ample opportunity to make representations about her means and had

completely failed to do so. Accordingly the Tribunal made an immediately enforceable order.

Statement of Full Order

65. The Tribunal Ordered that the Respondent, Jane Margaret Helen Henry, solicitor, be struck off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,500.00.

Dated this 12th day of June 2015
On behalf of the Tribunal

D. Glass
Chairman